

Exhibit 6
to
Declaration of Declaration of Andrew S. Hansen
Ralph Simon v. Select Comfort Retail Corp.,
and Select Comfort Corporation
Case No.: 4:14-cv-1136 (JAR)

In The Matter Of:
Ralph Simon vs.
Select Comfort Retail Corp., et al.

Neil Geoffrey Carlson
August 7, 2015



Min-U-Script® with Word Index

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI
3 EASTERN DIVISION
4 -----
5 RALPH SIMON,)
6 Plaintiff,)
7 vs.) Case No. 4:14-cv-1136(JAR)
8 SELECT COMFORT RETAIL)
9 CORP. et al,)
10 Defendants.)
11 -----
12 DEPOSITION
13 The following is the deposition of
14 NEIL GEOFFREY CARLSON, taken before Jean F. Soule,
15 Notary Public, Registered Professional Reporter,
16 pursuant to Notice of Taking Deposition, at the
17 office of Oppenheimer Wolff & Donnelly, LLP,
18 Campbell Mithun Tower, Suite 2000, 222 South Ninth
19 Street, Minneapolis, Minnesota, commencing at
20 8:59 a.m., Friday, August 7, 2015.
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22 * * *
23
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1 APPEARANCES:
2
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1 PROCEEDINGS
2 Whereupon, the deposition of NEIL GEOFFREY
3 CARLSON was commenced at 8:59 a.m. as follows:
4 * * *
5 (Reporter's Note: The oath was
6 administered by the court reporter.)
7 MR. CARLSON: I do.
8 * * *
9 NEIL GEOFFREY CARLSON,
10 after having been first duly sworn,
11 deposes and says under oath as follows:
12 ***
13 EXAMINATION
14 BY MR. CORWIN:
15 Q. Good morning, sir.
16 A. Good morning.
17 Q. Could you please state your name for
18 the record?
19 A. Neil Geoffrey Carlson.
20 Q. And you have been disclosed and, in
21 fact, have written a report in the case of Ralph
22 Simon versus Select Comfort; is that correct?
23 A. Yes.
24 Q. Did you write the report?
25 A. Yes.

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1 Q. I see. And, first of all, we have
2 your report and your rebuttal reports. Are you
3 familiar with those?
4 A. Yes.
5 Q. The opinions that you're prepared to
6 express in this case, are they contained in your
7 initial report and your rebuttal report?
8 A. I think I may have other opinions that
9 are outside, but the opinions that -- you know, I
10 can speak to the opinions that are in the report.
11 Q. Well, what other opinions can you
12 think of that are outside of your reports?
13 A. I don't know. It would be dependent
14 upon the questions that you ask me, sir.
15 Q. I understand. But you appreciate the
16 fact that this is a case where the rules require
17 that you put your opinions down in a report and
18 give them to us, you understand that?
19 A. I understand that. I just -- I can't
20 control your questions, sir.
21 Q. I see. So, first of all, you're going
22 to have to tell me if you come up with an opinion
23 that is outside your reports. Okay?
24 A. As to the best of my knowledge, I will
25 attempt to do that, yes, sir.

1 Q. Thank you.
2 What materials, if any, were you given
3 with regard to your preparation for this case?
4 A. Could you clarify, sir, what you mean
5 by materials?
6 Q. Sure. Have you read a deposition of
7 any of the individuals who have been deposed in
8 this case?
9 A. Um, I have glanced at a couple of the
10 depositions. I didn't read them thoroughly.
11 Q. Which couple of depositions did you
12 glance at?
13 A. I glanced briefly at -- at a summary
14 of Mister -- I guess the plaintiff's deposition.
15 Q. What is the plaintiff's name?
16 A. I don't remember. I just -- this is
17 the first time I've -- I've -- when you stated it,
18 that was the first time I ever heard it.
19 Q. So, I have your report that's been
20 provided to me. Did you disclose in your report
21 that you had reviewed the deposition of the
22 plaintiff in this case?
23 A. It was a cur -- I don't know if I did
24 or not. If you point it out to me, then --
25 Q. What other depositions did you glance

1 at, if any?
2 A. I'm trying to recall. I -- I was sent
3 some and I just -- I looked at, essentially, the, I
4 think -- and I'm going from recollection, summaries
5 of -- of the deposition provided to me by the
6 attorney.
7 Q. By Ms. Fisher or Mr. Hansen?
8 A. I -- I believe so, although there may
9 have been another person, because I had at least --
10 it looks like three different names that were
11 contacting me.
12 Q. I see. And you did not bring those
13 summaries with you today?
14 A. No, I did not, sir.
15 Q. And you did not disclose those in your
16 report that you --
17 MS. FISHER: Objection. It would be
18 attorney-client privileged information.
19 BY MR. CORWIN:
20 Q. You did not disclose in your report --
21 MR. CORWIN: Is he your client?
22 MS. FISHER: We are representing him
23 for the purposes of this deposition.
24 MR. CORWIN: Okay.
25 THE WITNESS: Well, go ahead.

1 BY MR. CORWIN:
2 Q. So you did not disclose that you had
3 the summaries and you did not bring them today; is
4 that right?
5 A. I did not bring the summaries today.
6 Q. Did you, by any chance, have a summary
7 or review the deposition of any Select Comfort
8 witnesses that had been deposed?
9 A. I don't recall seeing any of those,
10 sir. And I'll have to check my memory, but I don't
11 recall any.
12 Q. So the sole source of the information
13 that you have with regard to the allegations and
14 the testimony in this case is from Ms. Fisher and
15 her office; is that right?
16 MS. FISHER: Objection, misstates
17 testimony.
18 THE WITNESS: Yeah, that would be
19 correct, it does misstate testimony.
20 BY MR. CORWIN:
21 Q. How so?
22 A. In that I said I -- as I spoke
23 previously, I did glance at the information from
24 that one.
25 Now, I have a question to make sure

1 that I'm understanding this correctly. Are we --
2 When we talk about deposition, are we also talking
3 about rebuttal or not? I want to be clear about
4 that, sir.
5 Q. I don't understand your question.
6 A. Okay.
7 Q. If we're talking about rebuttal or
8 not, what do you mean?
9 A. Well, for instance, there was
10 depositions and then people wrote rebuttals to
11 reports. So do you include rebuttals to reports in
12 your -- in that statement that you asked me about
13 or are you just talking about strict depositions?
14 Q. I'll tell you what. I want to be on
15 the same page with you, so I'll start over. Okay?
16 A. Sure.
17 Q. You have been provided summaries of
18 some depositions, that's one thing, correct?
19 A. That's correct, sir.
20 Q. And you don't remember who the
21 summaries -- what deposition the summaries were?
22 A. Um, let's see, let's -- let's clarify
23 that again. Could you restate that? I want to
24 make sure I answer you correctly, sir.
25 Q. Okay, sure. And maybe -- well, let's

1 try this again.
2 Do you know which depositions were
3 summarized for you?
4 **A. I don't recall all of them, which --**
5 **all of them that were summarized, sir. I have,**
6 **let's see, a few facts that I gleaned from some**
7 **summaries, but I don't know where they were all**
8 **gleaned from, sir. So I -- that's my honest**
9 **answer.**
10 **Q. And your recollection is there was**
11 **about three deposition summaries that you reviewed?**
12 **A. I'm going to ballpark it at that, but,**
13 **again, I'm not -- I'm trying to be as accurate as**
14 **possible to you, sir.**
15 **Q. And I appreciate that, and the**
16 **summaries that you reviewed were provided to you by**
17 **Ms. Fisher or somebody from her office?**
18 **A. By representatives from Oppenheimer.**
19 **Would that be clear enough for you?**
20 **Q. Fair enough.**
21 **A. Okay.**
22 **Q. Now, have you been provided other**
23 **expert reports in this case?**
24 **A. I have been provided and I glanced at**
25 **some of the rebuttals to my -- to this, and I don't**

1 **recall the individuals and I don't recall the exact**
2 **number, but I was provided summaries of that, and I**
3 **did glance at those, just to get a flavor of where**
4 **they were concerned about.**
5 **Q. So we've talked about some expert**
6 **reports and rebuttals, we've talked about**
7 **deposition summaries and possibly glancing at the**
8 **deposition of the plaintiff in this case, correct?**
9 **A. Yeah.**
10 **Q. Is there any other material that's**
11 **specific to this case that you reviewed as part of**
12 **your work in this case?**
13 **A. I'm not sure what extent you mean by**
14 **other materials. So if -- if something comes up in**
15 **your line of questioning, then I will say, you**
16 **know, that, but I don't know where your line of**
17 **questioning is going, sir, because I don't know if**
18 **I'm -- if, for instance, you ask me a line of**
19 **questioning and I'll say, well, this informed my**
20 **opinion and it was a reference in a book. Do you**
21 **know what I mean, sir?**
22 **Q. Well, I'm not talking about references**
23 **to books.**
24 **A. Oh, okay.**
25 **Q. I'm talking about case specific**

1 materials. For instance, have you reviewed or
2 looked at any photographs --
3 **A. Oh.**
4 **Q. -- that were taken in this case?**
5 **A. Thank you, that's very helpful.**
6 **I did see images of, let's see, the**
7 **bed in a driveway, and then I glanced at some of**
8 **the images, and I don't know if they were provided**
9 **by -- let's see, I believe it was the doctor**
10 **that -- or the person that was hired by Oppenheimer**
11 **to do the analytical work or the cultured samples**
12 **for the -- the bed. So I --**
13 **Q. Do you know who that is?**
14 **A. I don't recall the person's name, but**
15 **it -- I'm -- I'm not -- I don't remember the name.**
16 **Q. So we've now added to your reference**
17 **materials, if you will, case specific --**
18 **A. Thank you, sir.**
19 **Q. -- photographs. Anything else that**
20 **you can think of that you've reviewed to do your**
21 **work in this case?**
22 **A. I'm not sure. If in the course of**
23 **inquiry that comes up, I will notify you of that,**
24 **sir, but I'll try to be as --**
25 **Q. But as you sit here today, the**

1 glancing at the plaintiff's deposition, the
2 deposition summaries provided by Oppenheimer, and
3 the sets of photographs that you identified, those
4 are the only things that you can think of that are
5 specific to this case that you reviewed during your
6 work on this case?
7 **A. I would -- I would add the rebuttal**
8 **that I mentioned.**
9 **Q. Sure. The expert reports and the**
10 **rebuttal?**
11 **A. Okay. I wanted to make sure that we**
12 **added that so we'd be clear. As far as -- and,**
13 **again, I will tell you that I will let you know if**
14 **during the course of questioning something else**
15 **comes up. Is that fair, sir?**
16 **Q. What I want now is a -- I've detailed**
17 **for you everything that you can think of right now**
18 **that you've reviewed during your work for this**
19 **case; is that correct?**
20 **A. I will say that --**
21 **MS. FISHER: Objection, asked and**
22 **answered.**
23 **THE WITNESS: Um, I'm looking for a**
24 **little guidance here.**
25 **BY MR. CORWIN:**

1 Q. It's a yes or no answer.
2 **MS. FISHER:** I believe the witness
3 said that he's told you everything that he can
4 think of at this time, and he will supplement his
5 answer as the deposition goes on.
6 **THE WITNESS:** I don't want to be --
7 sir, I don't want to be in a position where I'm
8 being untruthful to you. Do you understand, sir?
9 **BY MR. CORWIN:**
10 Q. I want to be in a position where I
11 don't have any surprises, sir. Do you understand
12 that?
13 **A. I understand your need to not be**
14 **surprised.**
15 Q. Okay. So let's try this again.
16 You have glanced at the deposition of
17 the plaintiff?
18 **A. Uh-huh.**
19 Q. You've reviewed summaries of other
20 depositions of individuals you can't think of the
21 names that were provided by Oppenheimer?
22 **A. Yes.**
23 Q. You've reviewed expert reports and
24 rebuttal reports, the rebuttal reports you believe
25 are those that discuss your opinions, and you've

1 reviewed some photographs. As you sit here today,
2 can you think of anything else that you reviewed
3 specific to this case during your work on this case?
4 **A. I -- at this point, no, at this right**
5 **moment in time, no.**
6 Q. Now, you would agree that tease tape
7 sampling is useful for determining if a material
8 surface has fungal growth on it, wouldn't you?
9 **A. Yes, sir.**
10 Q. And you would agree that tease tape
11 sampling is useful to determine whether a surface
12 has heavy spore deposition of problematic
13 organisms, wouldn't you, sir?
14 **A. Yes, sir.**
15 Q. And you would agree that tease tape
16 sampling of a surface is useful to determine
17 whether that surface has normal spore deposition
18 with no fungal growth, correct?
19 **A. Yes, sir.**
20 Q. So in your business, tease tape
21 sampling is an acceptable method for identifying
22 mold; is that correct?
23 **A. Yes, sir.**
24 Q. I'd like to talk to you a little bit
25 about mold, if I may. There are all types of molds

1 in this world, are there not?
2 **A. Yes, sir.**
3 Q. And we have talked -- or we will talk
4 about Cladosporium in this case, correct? Well,
5 I'll ask the questions.
6 You're aware that Cladosporium is a
7 mold that's involved in this case; is that right?
8 **A. Yes, sir.**
9 Q. And you are aware of the studies in
10 which people can have a sensitivity to Cladosporium;
11 is that right?
12 **A. I would ask you to define sensitivity,**
13 **sir, so I want to make sure --**
14 Q. Allergic to it?
15 **A. Yes, sir.**
16 Q. There are other molds in this world
17 that people -- common molds that people can be
18 allergic to, right?
19 **A. Yes, sir.**
20 Q. So, can you describe what Aspergillus
21 is?
22 **A. It's a genus of fungi that are --**
23 **well, they were named after -- if you're familiar**
24 **with the Catholic faith, the -- when they dip the**
25 **Aspergillus into the water and you put the Holy**

1 **Water, and then when they saw it under a microscope**
2 **they said this looks like a Catholic Aspergillus.**
3 **So the structure of the mold looks like an**
4 **Aspergillus. So when they saw it under a**
5 **microscope, they had a nice name for it.**
6 Q. And would you consider Aspergillus a
7 common mold?
8 **A. Yes.**
9 Q. Aspergillus can be toxic in some forms
10 to humans?
11 **A. It depends -- can I clarify that it**
12 **depends on the species?**
13 Q. Sure, and that's why I said in some
14 forms?
15 **A. Yes, that's correct. I wanted to make**
16 **sure --**
17 Q. So what species of Aspergillus can be
18 toxic?
19 **MS. FISHER:** I'll just object to the
20 phrase toxic. I think it's vague.
21 **THE WITNESS:** Do -- Can I ask for
22 clarification by what you mean by toxic?
23 **BY MR. CORWIN:**
24 Q. Well, what did you mean when you said
25 yes?

1 A. Well, I would say -- let's say
2 aflatoxin, which is present in peanuts, which is
3 usually caused by *Aspergillus flavus*. So that
4 would be a toxin that by ingestion causes health
5 effects. Does that clarify it?

6 Q. It sure does.

7 A. Okay.

8 Q. And you're familiar with the studies
9 that people can be allergic to *Aspergillus*,
10 correct?

11 A. Yes.

12 Q. And people certainly can be harmed if
13 it is the species of *Aspergillus* that creates
14 aflatoxin, correct?

15 A. If they ingest material that has
16 aflatoxin in it, they can -- produced by that
17 fungus, they can be harmed by it, yes, sir.

18 Q. *Fusarium*, is that a common mold?

19 A. It's a little bit less common, but,
20 yes, it is both a -- it's a -- the organism -- it
21 comes in various shapes, but the typical organisms
22 will be canoe shaped with multi-septations. It is
23 a plant pathogen. It can cause problems with
24 spoilage of grain. They, for instance, will have
25 problems with -- let's say during a harvest if the

1 moisture event or rain event occurs at the wrong
2 time, it will spoil the -- the *Fusarium* will take
3 over the crop and spoil it; and it can produce,
4 under appropriate conditions, several different
5 types of toxins, depending upon the species of
6 *Fusarium*.

7 Q. I'm going to butcher this one.
8 *Cunninghamella*, how do you say that?

9 A. Yeah, you're -- you're good.

10 Q. I'm good?

11 A. Yeah.

12 Q. Okay. Tell me about that mold?

13 A. That one is -- I'm recalling it's a
14 little bit less common. It is, I believe, a -- as
15 I -- my recollection, it's a *Zygomycetes*-type
16 organism. So those organisms are slightly
17 different from other ones, particularly when --
18 their sexual reproduction is -- it produces
19 *Zygotes*, and they have two -- two different
20 sections that come together and they clamp, and
21 then there's a *zygospore* that's produced in the
22 middle of it. It also has a method of asexually
23 reproducing so the head of it looks, at least on
24 first examination, somewhat similar to an
25 *Aspergillus* head, but then you'll have buds that

1 come out from it like that (indicating).

2 Q. Great. And can it be found in the
3 homes of individuals, people in the United States?

4 A. That one is less commonly identified
5 than some of the other organisms that you
6 mentioned. It can be found, but it's less common.

7 Q. What are *ochratoxins*?

8 A. *Ochratoxins*?

9 Q. Yes, sir.

10 A. Those are toxins of, I guess, the --
11 the *Seminole* organism that produces it is
12 *Aspergillus ochraceus*, that organism that is -- it
13 produces a stipend, and it's got a roughened edge
14 on the stipend, and the head is a beautiful yellow
15 color. It's -- *ochraceus* is named for the color of
16 the organism, and that organism can produce a
17 toxin. I am a little bit less familiar with the
18 effects on it, but it does produce one.

19 Q. Let's talk about the effects. If
20 somebody ingests an aflatoxin, what are some of the
21 common reactions?

22 A. Typically, the toxic effects are
23 related more toward long-term exposure, and my
24 recollection on this is a -- whether it's more a
25 kidney or a liver toxin, but you can produce

1 some -- I believe some carcinogenic effects.

2 Q. And you mentioned it was like a peanut
3 allergy. I was on a plane recently --

4 A. No, no, it's not like a peanut
5 allergy.

6 Q. Oh, I thought you said it was?

7 A. No. It grows -- it grows on peanuts,
8 but it's not an allergy.

9 Q. I see.

10 A. Just to clarify.

11 Q. Thank you.

12 Some people will be more sensitive
13 than others to aflatoxins; is that right?

14 A. I -- I actually don't know about
15 variable sensitivity to the aflatoxin.

16 Q. What is a mycotoxin?

17 A. A mycotoxin is a toxin that is
18 produced by a fungal organism, hence, the M-Y-C-O,
19 which would be -- designation as fungal organism,
20 and the toxin would be the chemical that's
21 typically a fairly large structure, typically -- at
22 least the best research we know, not typically
23 volatile but be -- be present either on the spore
24 or on the -- the mycelia.

25 Q. And what are the health effects of

1 somebody -- to somebody, generally speaking, that
2 ingests a mycotoxin?

3 **A. It depends on the mycotoxin, it**
4 **depends on the dose. So the typical -- there's two**
5 **tracts, for instance, if we were talking about a**
6 **couple -- it depends on the growth characteristics**
7 **and how it was growing and how it was produced.**
8 **So, for instance, like it's -- let's look at**
9 **Stachybotrys as an example. If -- if you ingest**
10 **it, you can have one of two main tracks, one would**
11 **be a suppressed immunity, the other one would be --**
12 **and this is primarily in animals that have ingested**
13 **hay that has Stachybotrys growing on it.**

14 **Q. I don't mean to interrupt you. I'm**
15 **talking about the health effects on humans, not on**
16 **animals.**

17 **A. On humans?**

18 **Q. Yes, sir.**

19 **A. Ingestion is -- is -- as far as**
20 **inhalation, it's very difficult. They had a --**
21 **they had a case of hemosiderosis in CDC, and it's**
22 **since been disproved, so it's really difficult by**
23 **inhalation to prove that people get enough dose to**
24 **have an ill health -- health effect.**

25 **Q. And that's what the literature says?**

1 **A. That's what the literature says. And**
2 **when it first came out, they were really concerned**
3 **because the hemosiderosis that was seen was**
4 **somewhat similar to what they were seeing in**
5 **animals, but they did subsequent tests on it and**
6 **there was concomitant exposure to high levels of**
7 **tobacco smoke, which made that problematic for them**
8 **to determine cause and effect.**

9 **Q. Are you just talking about one**
10 **particular mycotoxin or all mycotoxins?**

11 **A. I was talking, in particular, that**
12 **mycotoxin.**

13 **Q. No, and I -- see, that's where I want**
14 **to make sure --**

15 **A. Sure.**

16 **Q. -- we understand each other.**

17 **A. Okay, thank you, thank you.**

18 **Q. Because there are a number of molds**
19 **and fungal materials that create mycotoxins, right?**

20 **A. Yeah, that is correct, sir, yes.**

21 **Q. And some of those molds and/or fungal**
22 **materials can be found in the house of people in**
23 **the U.S., correct?**

24 **A. Yes, sir.**

25 **Q. All right. So those mycotoxins, they**

1 are called myco, meaning mold, toxin meaning they
2 are toxic to individuals, correct?

3 **A. In the appropriate dose, yeah.**

4 **Q. So that's what I was asking you. So**
5 **of those mycotoxins, say, for instance, the**
6 **Aspergillus that can create a mycotoxin or a**
7 **aflatoxin, in this case, what kind of health**
8 **effects can an individual have if they're exposed?**

9 **A. The best data we have is by inhal --**
10 **ingestion. The inhalation data is not so good. So**
11 **the ingestion data would be -- for instance, I**
12 **think I talked about with the aflatoxin, the kidney**
13 **and liver problems and potential associated cancer,**
14 **I believe, aflatoxin is listed as a carcinogen;**
15 **and, then -- then the other effects that I**
16 **mentioned for Stachybotrys, which would be**
17 **primarily by ingestion, would be immunosuppression**
18 **and -- and, then, in animals, although the human**
19 **part isn't proved, the hemosiderosis issue.**

20 **Q. What type of conditions does**
21 **Aspergillus need to grow?**

22 **A. It depends on the species. So I can**
23 **give you a specific one for fumigatus, if you would**
24 **like.**

25 **Fumigatus is a thermophile, so it**

1 **grows well at conditions that are above body**
2 **temperature. So, for instance, in a compost pile,**
3 **the heat in the compost pile, typically, gets above**
4 **37 degrees and can get quite warm, and that's how**
5 **the compost works; and Aspergillus fumigatus will**
6 **grow very well at those temperatures. It needs --**
7 **I think all -- all --**

8 **Q. And that's fine. What I'm looking**
9 **for, are there any Aspergillus that grow at less**
10 **than body temperature?**

11 **A. Oh, yes. A fumigatus will grow**
12 **through that wide -- it's a wide ranging.**

13 **Q. What type of food sources, in general,**
14 **does an Aspergillus require?**

15 **A. It's, again, dependent on the species.**
16 **But this goes for -- it would, essentially, require**
17 **dust, moisture, proper temperature or any one of**
18 **those three, and you have to have those in the**
19 **right combination, then you can -- you can get**
20 **growth. If -- if, for instance, if it's completely**
21 **dry -- fungal organisms need some -- some moisture**
22 **to work, because the way they digest food is their**
23 **stomachs are, essentially, outside their bodies, so**
24 **they have to have some sort of moisture to -- to**
25 **allow them to digest.**

1 Q. Cladosporium is the same way, it needs
2 dust, moisture and temperature?
3 A. Yeah. And it would also -- yeah, I
4 think that's --
5 Q. And it can grow over a wide range of
6 temperatures?
7 A. It's a little more limited than
8 fumigatus. I believe there is one species of
9 Aspergillus that can grow above body temperature.
10 Cladosporium, in general, is like -- it goes from
11 psychrophilic to mesophilic. Psychrophilic means
12 above freezing to generally below body temperature.
13 So the vast majority of Cladosporium would grow in
14 that temperature range.
15 Q. And did you do any testing to
16 determine the temperature that's reached on a
17 Select Comfort bed while a person is sleeping in
18 it, and what I mean the temperature where you put
19 the mold sample?
20 A. You asked a couple questions.
21 Q. And let me rephrase it for you.
22 A. Yeah, yeah.
23 Q. Because we're going to get into your
24 experiment in a little bit.
25 A. Sure, yeah.

1 Q. But you put the mold sample next to
2 the air chamber and below the foam topper pad; is
3 that right?
4 A. Yeah. We put it on the -- the chamber
5 and then below the foam topper.
6 Q. Did you do any testing of the
7 temperature, the typical temperature, the
8 minimum -- the high temperature that is reached in
9 that area with a human body sleeping on the bed?
10 A. We did not do temperature measurements
11 with a human body on that.
12 Q. Did you do any temperature
13 measurements at the location where you placed the
14 mold sample for your experiment?
15 A. Our -- I want to be clear about it.
16 We did general temperatures in the room. But are
17 you saying like a thermocouple placed --
18 Q. Yes.
19 A. -- at that location? We did not do a
20 thermocouple at that location.
21 Q. Would you agree with me that molds in
22 a damp environment do not release spores well?
23 A. Um, it depends on whether there is a
24 mechanical disturbance of the material or not. So
25 I -- do you -- do you want to rephrase your

1 question?
2 Q. Nope.
3 You would agree with me that when mold
4 spores are dry, they are able to be more readily
5 released, usually with the help of mechanical
6 forces, correct?
7 A. Um, let's see. I got to think through
8 all the different scenarios there, sir. If the
9 mold spores are in a position where it's, let's
10 say, completely saturated, soaking wet, it's
11 difficult for them to be released. If, however,
12 it's damp underneath, but like the spores on top
13 are in a condition where it's -- it's not soaking
14 wet and it's able to be released, it's going to be
15 fairly similar between -- because the organism when
16 they're dry they tend to behave a little bit
17 differently, and they may not aerosolize as well
18 because of the structure of them because they're --
19 they're desiccated. So it's kind of -- well --
20 Q. Mold spores that are living and damp,
21 do they release into the air?
22 A. Yes, sir.
23 Q. You need a mechanical process, is that
24 what you were going to say?
25 A. Um.

1 Q. Or you do not need a mechanical
2 process?
3 A. It depends -- so I'm going to define
4 the mechanical process for you. So you would --
5 let's give an example. Let's say we had spores
6 growing on the wall there. If I bumped the wall,
7 it would be released. If you had air flowing by,
8 it would be released. And when I'm talking about
9 mold, I'm talking just about mold, not
10 basidiospores, to be clear, because basidiospores
11 provide their own energy for releasing, so they
12 ballistically shoot these out, but the organism
13 that we're talking about, Cladosporium, doesn't
14 have a method of shooting it out on its own. Does
15 that help you?
16 Q. Sure.
17 You agree with me that for some
18 individuals Cladosporium can be the cause of
19 allergies?
20 A. Yes, sir, I did.
21 Q. You wrote that, in fact, right?
22 A. I -- I -- if it's in my report, yes.
23 Q. Do you know what type of Cladosporium
24 was identified by Patsy Duncan?
25 A. No. She didn't indicate that in the

1 report. I did -- she -- and if this was not
2 included in my original statement there, I want you
3 to add that, because I did -- she -- I did see
4 that, the EMLab P&K part. So if you want to add
5 that, I did see that it was Cladosporium, but I
6 didn't see whether it was -- the species wasn't
7 identified. It was a tease tape that said
8 Cladosporium species.

9 Q. Did you see the pictures associated
10 with it?

11 A. I didn't see a picture of the
12 organism. That would have been really helpful, but
13 I did not.

14 Q. You agree that Cladosporium is
15 commonly found indoors, growing on dusty surfaces?

16 A. If -- if there's sufficient moisture,
17 yes, sir.

18 Q. These surfaces include window sills,
19 concrete walls, supply diffusers, shower walls, and
20 labels on bottles stored in walk-in coolers?

21 A. Yeah. There's others, but, yeah.

22 Q. Did you do any analysis to determine
23 whether the air chamber of the bed used by Ralph
24 Simon could grow Cladosporium mold?

25 A. I did not have access to Mr. Simon's

1 chamber.

2 Q. Did you do any testing as to whether
3 the topper pad, the foam pad of Mr. Simon's bed,
4 could grow mold?

5 A. I was not -- I did -- not given access
6 to that.

7 Q. Did you ask to see it?

8 A. Um, I'm trying to recall if I did.

9 I -- I can't recall if I did or not. I -- it would
10 have been nice to have the -- have access to it. I
11 believe access was given to the other -- the person
12 who did the microbial work for Select Comfort that
13 was local.

14 Q. What do you mean by microbial work,
15 what does that mean?

16 A. The person that used techniques to
17 determine if they could find growth on a --
18 microbial would -- is a -- if we're going to have a
19 Venn diagram, microbial would be here, and it means
20 growth that's visible microscopically.

21 Q. Okay. Do you remember that person's
22 name?

23 A. No, I don't. I -- it's a rather
24 long -- but I can't remember his exact name. But
25 he was --

1 Q. Did you speak with that person as you
2 were designing your experiment in this case?

3 A. No, I did not talk to that person.

4 Q. You would agree with me that the IAQA
5 suggests that being prompt, serious and transparent
6 in managing complaints is sound and will keep
7 people informed and on track towards resolving the
8 problem?

9 MS. FISHER: Objection, vague.

10 THE WITNESS: I -- I -- I'm not
11 familiar with that -- that IAQ -- could you --

12 BY MR. CORWIN:

13 Q. Indoor Air Quality Association.

14 A. I'm familiar with that organization.
15 I haven't seen that specific statement. So if you
16 could re -- reread it for me?

17 Q. You don't remember that statement?

18 A. I want you to reread it for me so that
19 I can recall.

20 Q. Okay. The IAQA suggests with regard
21 to complaints that being prompt, serious and
22 transparent in managing complaints is sound and
23 will keep people informed and on track towards
24 resolving the problem?

25 MS. FISHER: Objection, vague as to

1 complaints.

2 THE WITNESS: I'm not understanding
3 what -- where you're going with this or --

4 BY MR. CORWIN:

5 Q. Do you agree with that statement?

6 A. Um, prompt -- I'm going to paraphrase
7 it so that I kind of understand what it -- to me,
8 it sounds like they want people to clearly
9 communicate and respond with -- respond in a timely
10 fashion. Does -- does that -- that's my
11 understanding of that statement.

12 Q. And do you agree with that?

13 A. I think it's appropriate to get -- get
14 information and respond in a timely fashion, yeah.

15 Q. And be transparent?

16 A. I'm not sure what the --

17 MS. FISHER: Objection, vague.

18 THE WITNESS: I don't understand where
19 you're going with transparent. Do you mean -- what
20 do you mean by that? I -- if I under --

21 MS. FISHER: Objection. There's no
22 context for the statement. We have no idea what --
23 the witness has no idea what you're talking about.

24 BY MR. CORWIN:

25 Q. I'm talking about complaints,

1 complaints about indoor air quality, about mold?
2 **A. So, in other words -- this will help**
3 **me understand where you're going with it. Can I --**
4 **I'm just trying to clarify.**

5 **So, in other words, if I get a**
6 **complaint from somebody and they say I think I've**
7 **got a mold problem here, and then I do an analysis**
8 **with them and I confirm that, yes, there is mold**
9 **growth or not growth and I'm being transparent with**
10 **them about the results, is that what you mean?**

11 **Q. You understand what the Indoor Air**
12 **Quality Association is, right?**

13 **A. Yes.**

14 **Q. Are you a member of that?**

15 **A. I believe at one time I was. I don't**
16 **believe I am anymore.**

17 **Q. So in the context of complaints to a**
18 **building manager --**

19 **A. Uh-huh.**

20 **Q. -- or owner from a tenant that there**
21 **is a complaint of mold, the IAQA suggests that**
22 **being prompt, serious and transparent in managing**
23 **the complaints is sound and will keep people**
24 **informed and on track towards resolving the problem?**

25 **A. I would agree.**

1 **Q. Wouldn't you agree that a manufacturer**
2 **of a product that is being sold into the community**
3 **has that same obligation?**

4 **MS. FISHER: Objection, foundation.**

5 **THE WITNESS: I'm not sure where**
6 **you're going with that. I don't know if they are**
7 **obligated legally to do that, sir.**

8 **BY MR. CORWIN:**

9 **Q. Don't the same principles apply, that**
10 **promptness, seriousness and transparency will**
11 **manage the complaint and keep people on track to**
12 **resolving the problem?**

13 **A. I don't know a company's legal**
14 **obligation. So you're asking me on something that**
15 **is a matter of, let's say, a corporate decision,**
16 **and I -- I'm not -- I'm not a person that**
17 **manufactures anything.**

18 **Q. In your opinion, what is the easiest**
19 **way to kill mold such as Cladosporium or**
20 **Aspergillus?**

21 **A. Cladosporium is really tough to kill.**
22 **The -- let's see, because I've tried to kill it.**
23 **We had -- I'll give you an example, and then we can**
24 **work through it.**

25 **We had Cladosporium when I first**

1 **started working growing on dust on fiberglass, and**
2 **I -- we did mechanical cleaning of the surface and**
3 **then did follow-up sampling. It was still there.**
4 **We treated it with a quaternary ammonia compound.**
5 **It was still there. We did treat it with bleach,**
6 **and as a short-term biocide it does a pretty good**
7 **job of -- of taking care of it.**

8 **Q. But you would agree with me there are**
9 **molds that can actually use bleach as a food**
10 **source, right?**

11 **A. I don't think they use it as a food**
12 **source. Here's the way it would be. Let's think**
13 **about -- let's think about it from an ecological**
14 **perspective and you're looking at competition. So**
15 **if bleach comes along and wipes out all of your**
16 **competition but doesn't kill all the spores that**
17 **are left over, then they look and say, hey, after**
18 **the bleach turns back to sodium chloride and after**
19 **a sufficient amount of time, then it says I've got**
20 **an open field and then another organism will take**
21 **up. Typically, in this ecological niche, it would**
22 **be penicillium that would take over.**

23 **Q. So using bleach or a bleach/water**
24 **solution to attempt to kill mold could actually**
25 **have the opposite effect and ultimately create a**

1 **better environment for the mold?**

2 **MS. FISHER: Objection, misstates**
3 **testimony.**

4 **THE WITNESS: It -- it would -- it**
5 **works better for penicillium. The Cladosporium**
6 **typically doesn't come back, at least in the**
7 **studies that I was doing, but like a penicillium**
8 **may come back after -- after -- if the underlying**
9 **conditions with respect to dust deposition and**
10 **humidity. If underlying conditions are -- are a**
11 **little bit better, then, it can be an effective**
12 **biocide. So it depends on the conditions**
13 **subsequent to the use.**

14 **BY MR. CORWIN:**

15 **Q. And I appreciate that, but you**
16 **mentioned penicillin. But can a mold such as**
17 **Aspergillus come back once the other organisms are**
18 **killed?**

19 **A. I've got more experience with**
20 **penicillin personally. I can't speak to the**
21 **Aspergillus, but I can speak to the penicillin.**

22 **Q. You can't rule out that Aspergillus**
23 **could?**

24 **A. That is correct, sir, I couldn't.**

25 **Q. You would agree that based on your**

1 experience effective mold remediation has resolved
2 allergy and asthma symptoms associated with mold
3 exposure?

4 **MS. FISHER:** Objection, foundation.

5 **THE WITNESS:** Um, I'm going to have to
6 go with -- the Institute for Occupational Medicine
7 indicates that they haven't even found an
8 association between mold remediation and -- and
9 that -- the reduction in exposure. They have,
10 however, found a -- an association between removal
11 of water damage materials, of which mold is a
12 constituent of it, and so there's that association,
13 but they're having a difficult time getting to
14 the -- getting to the association specifically with
15 mold, but they -- but mold would be a constituent
16 of the water-damaged material.

17 **BY MR. CORWIN:**

18 Q. So let me ask you once again. Do you
19 agree or disagree with the statement that based
20 upon your experience effective mold remediation has
21 resolved allergy and asthma symptoms associated
22 with mold exposure?

23 **MS. FISHER:** Objection, asked and
24 answered.

25 **THE WITNESS:** Yeah. I'd have to add

1 the other caveats to that to make that an honest
2 answer.

3 **BY MR. CORWIN:**

4 Q. Do you agree that there was evidence
5 of reduced antihistamine use and the ability of
6 asthmatic individuals to return to the workplace
7 following mold remediation?

8 A. With the caveat that we were talking
9 about, other water-damaged materials, because I
10 don't want to step beyond what the scientific
11 literature says.

12 Q. So if somebody makes those two
13 statements in writing to the public, they should
14 put those caveats in there?

15 A. It would be -- at least based on the
16 information from the Institute For Occupational
17 Medicine, that would be the most scientifically --
18 or that would be the scientifically accepted way
19 of -- of -- of doing it, and it may be a few years
20 or some years from now that we're able to tie that
21 down specifically to get an association, but right
22 now it's -- it's a little bit -- it's -- we're
23 parsing it -- we have to parse it out as saying
24 that the mold is a constituent of the water-damaged
25 material, but they're trying to link that and

1 they're having a dickens of a time doing it.

2 Q. So if somebody made those statements
3 that I read to you --

4 A. Yeah.

5 Q. -- without the caveats, those
6 statements would be misleading?

7 A. Minorly misleading. In other words,
8 they're talking about -- I can't say that they're
9 completely incorrect, but I can -- so it -- it's
10 really kind of parsing it. And, typically, when
11 you do remove the mold you're also removing the
12 water-damaged material. So a -- as a practical
13 application, it's the same.

14 Q. Have you ever done mold remediation?

15 A. Um, I have done it, and then I have
16 specified it, and I've taught courses in it.

17 Q. So I'd like to talk to you a little
18 bit about this experiment that you performed. Okay?

19 A. Yes, sir.

20 Q. All right. Now, I'm going back to
21 high school science, and bear with me, but I
22 remember that the process was you developed a
23 hypothesis, you designed a test, you performed the
24 test, you record data, and then you reach a
25 conclusion, correct, is that kind of a basic way of

1 saying it?

2 A. That's the basic scientific method.

3 Q. Okay, great. It's been a while since
4 I've been in high school.

5 So, when you started this endeavor,
6 what was your hypothesis?

7 A. Um, with -- particular with respect to
8 this experiment, the hypothesis would be that mold
9 spores placed -- or, in other words, placed in that
10 material would essentially be released through
11 the -- the chamber, all the way through the top,
12 and that we would -- by using the rollator, we
13 would, essentially, see if there was -- if there
14 was enough mechanical energy, we would see
15 progressively more spores released throughout the
16 course of the experiment because we're agitating it
17 and trying to release the spores from the chamber.

18 The null hypothesis would be that the
19 agitation of the chamber material would not release
20 spores above background levels and that you
21 wouldn't see a progression of elevated spores.

22 Q. So you had to have information or a
23 request that led you to start developing this
24 hypothesis. What information did you have to
25 develop this hypothesis?

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1 **MS. FISHER:** Objection, vague.
 2 **THE WITNESS:** Um, the --
 3 **BY MR. CORWIN:**
 4 Q. If it's vague, I don't want you to
 5 answer a vague question.
 6 A. Yeah.
 7 Q. What information did you have about
 8 this case that you used or assisted you in
 9 developing this hypothesis?
 10 A. Thank you for clarifying that.
 11 Q. Sure.
 12 A. The information I had was that the
 13 mold that -- essentially that was identified, let's
 14 say approximately two months after the person
 15 observed this discoloration, and then there was a
 16 tease tape sample taken by this person from
 17 Fungus-A-Mungus, and then two months later that
 18 person took the tease tape sample. It was sent to
 19 EMLab P&K, and they identified it as Cladosporium.
 20 There wasn't a specific species identified.
 21 Other piece of information was that
 22 the discoloration observed was on the foam material
 23 that was pressed up against the chamber material,
 24 and I learned post-experiment that -- and I want
 25 you to correct me if I'm -- if I don't understand

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1 it correctly, that the chamber at that time was
 2 discarded by the person. So we didn't have that.
 3 So I assumed that we were looking at the interface
 4 between the chamber material and the foam.
 5 Q. How long -- well, let me back up.
 6 Your test, over what period of time
 7 did you do the agitation and recording of the mold?
 8 A. We used the average sleep time for
 9 both British and Americans, and that average sleep
 10 time, according to various surveys, is six point --
 11 between 6.8 and 6.7 hours per night, so --
 12 Q. How many nights did you conduct the
 13 study?
 14 A. We conducted the study for one night,
 15 sir, yes.
 16 Q. And do you know how long Ralph Simon
 17 suffered with allergies associated with possible
 18 mold exposure, was it just one night?
 19 A. I don't -- I don't have the knowledge
 20 of the -- of how long Mister -- the plaintiff
 21 suffered.
 22 Q. Why did you choose one night to
 23 analyze?
 24 A. Well, we wanted to do more, but we
 25 only -- we had a -- we were told -- we were told to

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1 get ready, so we had to have the -- let's see,
 2 Mister -- the team for Mister -- I got to get the
 3 guy's name right. Mr. Barnum's team had to
 4 manufacture the bed because we -- they don't make
 5 that style of bed anymore, and we had to get it
 6 assembled, and then we had to get the stuff to grow
 7 cultures.
 8 So we performed one experiment, and
 9 then we wanted to perform another one, but Mike
 10 Buck was on vacation, so we didn't. We would have
 11 liked to have performed as many as we could have.
 12 Mike Buck needs the money for his college students,
 13 so -- We would have loved to do as many as we
 14 could. So it was time limitation. I would have
 15 liked to have done a lot of --
 16 Q. And the more samples that you do, the
 17 more accurate your test results or you can repeat
 18 them or you can verify them, correct?
 19 A. Yeah. I mean, I've done a similar
 20 experience, but I can't -- I don't know if I can
 21 reveal it because it was for a different case, so --
 22 Q. Sure, you can. In fact, I'm going to
 23 ask you about other experiments you've done for
 24 Select Comfort?
 25 **MS. FISHER:** Without divulging things

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1 that we talked about or you talked about with
 2 Oppenheimer for the case, if you want to talk about
 3 the facts of another experiment, you can go ahead
 4 and do that. I think it bears on this.
 5 **THE WITNESS:** Okay. Is -- Do you want
 6 me to discuss it now or not?
 7 **BY MR. CORWIN:**
 8 Q. We'll get into it in a minute.
 9 A. Okay.
 10 Q. But I think we're saying the same
 11 thing. You would agree that the testing would be
 12 of greater validity if you could do it over a
 13 period of time and repeat the results or develop a
 14 trend, correct?
 15 **MS. FISHER:** Objection, misstates the
 16 testimony, and objection to the word validity.
 17 **MR. CORWIN:** I'm not misstating
 18 anything, I'm making a new statement.
 19 **THE WITNESS:** I think -- we'll speak
 20 generally about the scientific process. If you can
 21 do more tests, it strengthens the -- the result or
 22 the -- the findings of the result, so --
 23 **BY MR. CORWIN:**
 24 Q. And you don't know based upon your
 25 testing, given all other conditions the way you

1 establish them, what the levels in the air of
2 Cladosporium would be over a five-year period of
3 normal use in sleeping by an individual, do you?
4 **A. Um, I don't think it's possible for**
5 **a -- with the current methods we have to establish**
6 **that.**

7 **Q. And you can't even tell the jury what**
8 **those levels would look like after 30 days because**
9 **you only did it once, right?**

10 **A. I could -- with respect to this**
11 **experiment and, let's say, outdoor levels, I could**
12 **give them a ratio on it. I could say the average**
13 **exposure outside is between 106,000 spores per**
14 **cubic meter of Cladosporium. I could give them**
15 **really good data with respect to outdoor levels,**
16 **and I could state that based on the experiment that**
17 **we ran here, the levels didn't approach that, but I**
18 **can't state that -- what 30 days would look like.**

19 **Q. How much did you charge for this**
20 **experiment?**

21 **A. I don't recall the exact amount. It**
22 **was -- Oppenheimer would have that information. We**
23 **just -- we charged for the amount of time that we**
24 **put into it, and our fee was \$150 an hour to do**
25 **the -- for our work. I think there were some --**

1 **also some additional costs that we weren't involved**
2 **with with respect to getting a rollator and -- and**
3 **constructing the -- the --**

4 **Q. Well, how do I find out what this**
5 **experiment cost Select Comfort?**

6 **A. I was doing the work for Oppenheimer,**
7 **so --**

8 **Q. And you don't believe under the**
9 **Federal Rules you have an obligation to tell us**
10 **what your costs were, what you charged?**

11 **A. I would tell you -- I told you 150 --**
12 **I don't recall the exact amount.**

13 **Q. How many hours did you put into this?**

14 **A. Let me ballpark it. I don't -- it was**
15 **less than 40 and more than -- because there was**
16 **some report preparation, and more than 10.**

17 **Q. And did Mr. Buck charge separately?**

18 **A. I can't remember how we did the**
19 **billing. I don't know if he -- we rolled our bills**
20 **together or if we did it separately, but his was**
21 **the same rate, was \$150 an hour.**

22 **Q. And do you have those bills back at**
23 **your office or someplace, have you kept them?**

24 **A. I do, and Oppenheimer has them since**
25 **we billed them. So you could obtain that from them**

1 **if you're interested, sir.**

2 **Q. I'm interested in obtaining what you**
3 **have.**

4 **A. I don't --**

5 **Q. And so far Ms. Fisher hasn't offered**
6 **to produce them, so --**

7 **A. I don't know my obligations on this.**

8 **MS. FISHER: We'll talk after the**
9 **deposition regarding the fee issues.**

10 **THE WITNESS: Okay.**

11 **If -- if there's no legal impediment**
12 **to me providing that to you, sir, then I will be**
13 **happy to do so. Does that answer your question?**

14 **BY MR. CORWIN:**

15 **Q. Sure. And there were separate costs.**
16 **Was there warehouse space that had to be rented?**

17 **A. I didn't -- I wasn't involved with any**
18 **of that.**

19 **Q. Oppenheimer set that up?**

20 **A. Yeah. I wasn't involved with that.**

21 **Q. And making arrangements -- Who decided**
22 **to use the roller, whose idea was that?**

23 **A. We asked -- we did a determination**
24 **about what would -- what we're trying to do is we**
25 **did an inquiry about what would be an appropriate**

1 **way or industry accepted standard way of simulating**
2 **sleep. I -- I toyed with the idea of actually**
3 **having a human being roll around on it, but then**
4 **you have to control for a lot of different**
5 **variables, and I want to make sure --**

6 **Q. Like mold exposure?**

7 **A. Well, no, like -- looking at it like**
8 **if I was going to have somebody repeat it, we'd**
9 **have to get somebody of exact weight, and we want**
10 **something that's controlled so that -- you know, we**
11 **have a rollator that goes over like this and comes**
12 **back and you've got a piece of equipment that's**
13 **generally accepted by the industry as far as**
14 **durability testing.**

15 **So it would be somebody -- if they**
16 **wanted to do that experiment again or repeat it,**
17 **they would -- okay, we've got a rollator and we can**
18 **use it, and it would be a lot more controlled**
19 **rather than having a human being do it. I have**
20 **done the human being part, but, again, that was**
21 **something I --**

22 **Q. Was what?**

23 **A. What?**

24 **Q. I didn't hear what your last thing**
25 **was. You said --**

1 A. I have --

2 Q. -- human being part but, and then you
3 trailed off.

4 A. I have done that, but that would be
5 something that -- I don't know if you'd be able to
6 have access to that information.

7 Q. Why, was that involving a case that
8 was in litigation?

9 A. As far as I -- it would be under a --
10 let's see. I have done work for Select Comfort,
11 but it's written -- I have a confidentiality
12 agreement. So I don't want to be violating that,
13 sir.

14 Q. Was that the experiment you did when
15 you compared traditional mattresses to Select
16 Comfort beds with regard to the propensity of mold
17 growth?

18 MS. FISHER: Objection, assumes facts
19 not in evidence.

20 THE WITNESS: I have done that -- a
21 different experiment, but not what you're talking
22 about.

23 BY MR. CORWIN:

24 Q. Are you aware of any testing in which
25 Select Comfort beds were compared to traditional

1 mattresses and box springs with regard to the
2 propensity to grow mold?

3 A. I have done tests with respect to a
4 wide variety of mattresses, over 101, with respect
5 to spores that were in the -- approximately
6 90 percent of the mattresses had Cladosporium mold,
7 approximately a third of the mattresses had either
8 heavy Cladosporium deposition or mold growth. The
9 surface area sampled was -- when I cut the beds up,
10 was approximately about two-by-two, or a RODAC
11 plate, which is approximately two square inches.

12 I do not know where the beds came
13 from. It was a strictly observational study. I do
14 not know any of the conditions that the beds
15 were -- were -- the conditions prior to me seeing
16 them, I don't know anything about that.

17 Q. Who asked you -- who paid for that
18 study?

19 A. Um, I be -- I'm not sure who paid for
20 it. I -- I received payment, but I'm not sure.

21 Q. Was Oppenheimer involved?

22 A. I'm not sure if they were. I -- I'm
23 not a hundred percent sure who was involved. I was
24 told to do the study, so I did the study.

25 Q. Was Select Comfort involved?

1 A. It was done at a lab that -- that does
2 do Select Comfort work, but I was -- so I was
3 working on the -- on these beds.

4 Q. Did you do a written report?

5 A. No, I did not.

6 Q. Did you take notes?

7 A. Yes, I did.

8 Q. Did you provide the results of your
9 inspections to anybody?

10 A. I do not know if -- I did not provide
11 any written summary of the results, and I do not
12 know if anybody has the -- there was -- there was
13 no written report, so I don't know -- I don't know
14 how that information was conveyed.

15 Q. I see. Are you aware as whether
16 Oppenheimer knew about this testing?

17 A. I am not sure if they were or not.
18 They -- they may be aware of it.

19 Q. Do you know whether Select Comfort was
20 aware of this testing?

21 A. I'm going to assume that they probably
22 were, but I don't know how the information was --
23 was distributed.

24 Q. And did you also look at Select
25 Comfort mattresses when you were doing this

1 investigation?

2 A. Not during this one, no, this
3 particular one. I was looking at a wide variety of
4 different mattress types during -- during this
5 investigation and just looking at what --
6 essentially cutting them up, looking at different
7 parts of the mattress and taking samples and seeing
8 what the general prevalence of it is. It's --
9 Cladosporium is incredibly common in mattress dust.
10 So I was just going to get an idea and see if that
11 was true.

12 Q. When you did your samples, did you do
13 tape lift samples?

14 A. I did -- on this particular one, no.
15 I did a contact agar sample. So I was looking for
16 spore growth, so -- and the media was a potato
17 dextrose agar.

18 Q. Do you have any photographs or test
19 samples or anything related to this investigation?

20 A. I have -- I have notes. I do not
21 have -- I don't recall if I have any photographs or
22 anything, no, other than that.

23 Q. And you don't recall who paid for that
24 as you sit here today, under oath?

25 A. No, but I could look at my records and

1 **determine that, but as I -- I submitted -- I'll**
2 **have to see where I submitted a bill for the time**
3 **on that.**

4 Q. It's entirely possible that the
5 Oppenheimer firm paid your bill, isn't it?

6 **MS. FISHER:** Objection, calls for
7 speculation. I can tell you that's not the case.

8 **MR. CORWIN:** You're not under oath.

9 **MS. FISHER:** Well, I'm the one who
10 knows.

11 **THE WITNESS:** Well, I -- so I will
12 look at my -- I can provide my billing records and
13 subsequent --

14 **MS. FISHER:** Objection. You're not
15 required to provide anything.

16 **THE WITNESS:** Oh, okay.

17 **MS. FISHER:** It's not part of your
18 testimony here as an expert witness.

19 **MR. CORWIN:** You don't think so, you
20 don't think it goes to bias as to who he was paid
21 and how much, really?

22 **MS. FISHER:** No.

23 **MR. CORWIN:** Okay.

24 **MS. FISHER:** You don't even know when
25 this experiment took place.

1 **MR. CORWIN:** I was just going to ask
2 him that.

3 **BY MR. CORWIN:**

4 Q. When did this experiment, this
5 investigation take place?

6 **A. I'm going to give you a ballpark.**
7 **Approximately -- and I can provide it later if**
8 **there's -- if the -- if it's legally allowed.**
9 **Approximately six years ago.**

10 Q. Do you recall being informed or told
11 why you were being asked to do this investigation?

12 **A. No. It was just -- I was**
13 **essentially -- there was -- a mycologist was**
14 **working on it, and he wanted me to help out because**
15 **he was a bit overwhelmed by the volume of materials.**
16 **So I came in and worked through the --**

17 Q. What colleague was that?

18 **MS. FISHER:** I'm sorry. I don't
19 believe he said colleague. I believe he said
20 mycologist. Did you say mycologist?

21 **THE WITNESS:** Yeah, mycol -- I'm
22 sorry. It would be -- the correct statement would
23 be a mycologist.

24 **BY MR. CORWIN:**

25 Q. Well, thank you. What was the name of

1 the mycologist?

2 **A. You're going to be a little frustrated**
3 **with me. I know him by his first name, I call him**
4 **Dr. Don, and I can provide that information for you**
5 **later, but that's --**

6 Q. Do you know where Dr. Don is located?

7 **A. Um.**

8 Q. Is he in Minneapolis, is he
9 someplace --

10 **A. He's local. I can't give the direct**
11 **address.**

12 Q. And you don't know if he's associated
13 with the University or a college?

14 **A. He was a former university professor.**
15 **I believe right now he's working as a private**
16 **consultant.**

17 Q. You would agree with me that the
18 Select Comfort bed, such as the one used by Ralph
19 Simon, can develop mold, wouldn't you?

20 **A. I think that's true of any bed.**

21 Q. So you would agree with the Select
22 Comfort bed that was used by Ralph Simon could
23 develop mold, correct?

24 **A. I don't think I would use the -- well,**
25 **develop, I suppose, or mold spores could be --**

1 **Cladosporium mold spores could be present in his**
2 **Select Comfort bed, yes.**

3 Q. And other mold spores could be present
4 in a Select Comfort bed such as Ralph's?

5 **A. In any bed, yes.**

6 Q. So the statement is true, that mold
7 spores such as Aspergillus can be grown or
8 developed in Select Comfort beds such as Ralph
9 Simons's?

10 **MS. FISHER:** Objection, misstates
11 prior testimony.

12 **THE WITNESS:** Are you talking about
13 the presence of spores or growth?

14 **BY MR. CORWIN:**

15 Q. Both?

16 **A. I don't know about Aspergillus.**

17 Q. Can it grow?

18 **A. I don't know if -- if the conditions**
19 **are appropriate for Aspergillus growth. I --**
20 **I'm -- my focus in this one is on Cladosporium.**

21 Q. I understand. What are the conditions
22 in the Select Comfort bed that are conducive to
23 development of Cladosporium mold?

24 **A. I don't think there's any particular**
25 **conditions in the Select Comfort bed that are --**

1 other than it being a -- a surface that can collect
2 dust and that it's a -- if you apply water and dust
3 to a material, you can get growth, for instance,
4 you can get water and dust to carpet, it will grow.

5 There's -- Cladosporium likes to take
6 off anywhere. So almost anywhere where you have
7 moisture, dust and appropriate -- moisture, dust,
8 spores, and appropriate temperature.

9 Q. The same thing with Aspergillus,
10 correct?

11 A. It's a little tougher for Asper -- it
12 doesn't have as -- Cladosporium has got a wider
13 niche. Aspergillus is a little bit more selective
14 in its niche.

15 Q. But it can, you're not ruling out the
16 possibility with the way of the design of the
17 Select Comfort bed that Ralph Simon was using could
18 develop Aspergillus?

19 A. I -- you're asking me to speculate,
20 sir.

21 Q. No, I'm not. I'm asking you to use
22 your expertise in training, and I presume you know
23 how this bed was put together and what happens when
24 a person sleeps?

25 MS. FISHER: Objection, calls for

1 speculation, and asked and answered.

2 THE WITNESS: Yeah. I -- I don't know
3 where you're -- I -- I can't speak to Aspergillus,
4 I can speak to Cladosporium.

5 BY MR. CORWIN:

6 Q. Well, you said that Aspergillus needs
7 water, source, food source, and temperature to grow,
8 correct?

9 A. Yes, and -- and -- but the conditions
10 for it are a little bit more picky than for
11 Cladosporium. So I -- let's say when I'm looking
12 at a walk-in cooler, I can see Cladosporium
13 everywhere, but I don't necessarily see Aspergillus,
14 fumigatus or Aspergillus growth as much.

15 Q. Because of the temperature?

16 A. Because of the temperature or -- you
17 know, I'm looking at an environment and I see
18 Cladosporium a lot. I don't see -- and when we do
19 air samples, let's say, for instance, outdoor air
20 samples, Cladosporium is the most common mold.
21 Indoor air samples -- and I'm going to give you a
22 caveat. You don't see a lot of spores when there's
23 snow on the ground outside; and, then, inside the
24 most common organism is Cladosporium, and
25 typically -- and, then, I'm assuming that the

1 windows aren't open.

2 Q. But let's try to focus on the question
3 I'd like to have answered. Okay, sir?

4 A. Sure.

5 Q. You're identified as an expert in this
6 case?

7 A. Right.

8 Q. Correct?

9 A. Yeah.

10 Q. So you tell me, isn't it true that the
11 Select Comfort bed that was used by Ralph Simon
12 could grow Aspergillus mold?

13 A. I don't know if it can.

14 Q. You know that water can be transmitted
15 from the human body down to the air chamber, correct?

16 A. Yes.

17 Q. You are aware that Aspergillus is
18 found in the air on occasion inside homes and it
19 can land in the chamber, for instance, when you're
20 putting the bed together, correct?

21 A. Yes.

22 Q. And the temperature is in a range when
23 a human body is sleeping such that the conditions
24 could be acceptable for the growth of Aspergillus,
25 correct?

1 A. I'm not sure about Aspergillus. I
2 would like to be able to tell you that I -- I am
3 sure, but I don't know.

4 Q. Well, what temperature does
5 Aspergillus grow at --

6 A. I --

7 Q. Let me finish. Between freezing and
8 body temperature?

9 A. I don't -- the -- I'm not sure about
10 the lower end of Aspergillus, whether it -- I think
11 there may be one species that grows at the
12 psychrophilic temperature, in other words, cooler,
13 and there's one that grows -- and, then, there's
14 one that grows way up high, which would be
15 fumigatus.

16 It's in the right temperature range,
17 but I don't know if it grows in that.

18 Q. What about Fusarium, would conditions
19 be right or could they be right for growth on a
20 Select Comfort bed such as the one that Ralph Simon
21 slept on for years?

22 MS. FISHER: Objection, calls for
23 speculation.

24 THE WITNESS: Again, that would be
25 speculation. I don't know.

1 **BY MR. CORWIN:**

2 Q. Only because you haven't looked into
3 the issue?

4 A. I don't know if it's -- if -- yeah. I
5 don't -- I don't know if the conditions are
6 appropriate for that. It's -- it's a better plant
7 pathogen than it is -- like we see it in soils, but
8 I don't know if the conditions would be right for
9 it.

10 Q. Now, getting back to your scientific
11 study, when you design a test, you have to have
12 controls?

13 A. Yes.

14 Q. And what were your controls in this
15 test?

16 A. There's a couple -- we had essentially
17 multiple controls. We had culture plate controls,
18 we had -- we had samples that occurred, for
19 instance, we had -- we put nothing in the -- we
20 introduced -- we didn't introduce the -- I believe
21 it's five-by-ten piece of material with the yeast
22 and everything with the Cladosporium, we didn't put
23 that on first.

24 So we took a sample after we agitated
25 the bed with nothing in it. So that was a control

1 just to see what the background level was in the
2 room, and we also checked the particle levels at
3 that, and also checked the pressurization that --
4 we had HEPA-filtered air in there.

5 Then we placed the material in the
6 room and into control for any spores that may have
7 been released while we put that in there. We
8 did -- we purged that space again so it would be
9 clean and -- so that was another control; and then
10 we agitated it, and then that's when the
11 experimental process began.

12 We also had controls where we did an
13 outdoor air sample, and then we did a control where
14 we did a sample inside the warehouse.

15 Q. But I thought you concluded in your
16 report that the increase of Cladosporium found in
17 the air sampling was likely from the introduction
18 of warehouse air, did you not say that?

19 A. I said it could have been because
20 the -- when we were measuring the particle counts,
21 at least in the initial part, we were keeping it
22 low, but as -- there was a tremendous amount of
23 activity in the warehouse, and the spore
24 concentrations were quite high.

25 Q. So it's possible that your experiment

1 was contaminated by the outside warehouse air?

2 A. That -- in particular, with respect to
3 the penicillium. So the way I would interpret the
4 results would be that I would -- to be fair with
5 the plaintiff, I would assume that the Cladosporium,
6 at least for the most part, would be from the bed,
7 but I couldn't rule that out. I would have looked
8 to have been able to rule it out, but I couldn't.
9 So I would like to have -- you know, if -- if we
10 would have seen that the -- for instance, when we
11 were going we -- we'd see a nice increase, but we
12 didn't. I don't think the outside, the air in the
13 warehouse would have caused any diminution in the
14 levels.

15 **MR. CORWIN:** Let's take a quick break
16 so I can get into a lightning round. Can we do
17 that?

18 **MS. FISHER:** We sure can.
19 (Break from 10:19 to 10:25.)

20 **BY MR. CORWIN:**

21 Q. So one of the things we had mentioned,
22 and I promised you we'd get back to this, is this
23 sounds like this is not the first case that you've
24 worked on at either Oppenheimer or Select Comfort's
25 request; is that correct?

1 A. That's correct, yes, sir.

2 Q. How many other cases have you worked
3 on?

4 A. I'm not exactly sure with respect to
5 number. I -- I -- because -- and the reason I'll
6 give to you is I'm doing some research, but I --
7 sometimes I'm not told whether it's related to a
8 case or sometimes I'm not even -- I just do some
9 work and then that's all I hear about it, so I'm
10 not sure.

11 I can specifically state that I was
12 working -- there is one I can think of in
13 particular where -- where I was working for
14 Oppenheimer because I was paid by them.

15 Q. And can you give me the basic facts of
16 that case --

17 A. I don't --

18 Q. -- in your work?

19 A. I wasn't appraised of the basic facts
20 of the case, other than there was Cladosporium and
21 the particular species was Cladosporium and I'm --
22 I'll have to give you the spelling later, it's
23 ferosperum (phonic). We can look it up for you to
24 help you out. And I was asked to -- in this case
25 it was a much smaller spot, it was a one-by-one

1 piece, and so, essentially, we did the same
2 experiment that we did for this one, and we didn't
3 see anything above background levels on that one.

4 So I anticipated -- that's why I had
5 the hypothesis that when we doubled the surface
6 area to, let's say, 50-by-10 that I might see, say,
7 50 times what I'd seen in that one, but I didn't
8 see it. So that surprised me.

9 Q. Was that done over a one --

10 A. That was --

11 Q. -- night period, also?

12 A. Yeah. It was, essentially, the same,
13 average sleep cycle is -- very similar test.

14 Q. And was that involving a personal
15 injury claim, also, do you know?

16 A. I'm not sure if there was or not.
17 I -- I was just told the organism and they wanted
18 to run the test.

19 Q. So you have not run this test with any
20 other organisms, Fusarium, Aspergillus, anything
21 else, it's always been Cladosporium; is that right?

22 A. Yes. It's been -- it's been either
23 Cladosporium as a genus or Cladosporium as a
24 specific species with this farosperum (phonetic).

25 THE WITNESS: And I'll give you the

1 spelling later.

2 BY MR. CORWIN:

3 Q. And we talked about the investigation
4 you did of 70, 80, 90, I think, I can't remember
5 the exact number but --

6 A. A hundred and one.

7 Q. A hundred and one different mattresses?

8 A. Yeah.

9 Q. And you don't know whether Select
10 Comfort mattresses were included in those?

11 A. Well, they weren't included because
12 when I was looking at the cut -- cutouts, they
13 weren't Select Comfort ones, they were all
14 different manu -- I mean, there were some that were
15 pretty old. I think there was some that had even
16 horse hair on it, so that was like a really old
17 one, and I don't think they do a lot of that, and,
18 then, there was modern, solid foam ones, and all
19 these different chambers. It was a hodgepodge of
20 mattresses, mattress designs.

21 Q. And as you sit here today, you can't
22 recollect whether your investigation was requested
23 or directed by Select Comfort or Oppenheimer?

24 MS. FISHER: Objection. I just want
25 to clarify. Which specific investigation, the 101

1 mattress investigation?

2 MR. CORWIN: Yes.

3 THE WITNESS: Okay. I will -- I can
4 provide information to make sure, because I would
5 know that from my billing. So I'll be happy to
6 provide to make sure you're accurate on that.

7 MR. CORWIN: Great, thank you.

8 THE WITNESS: Yeah.

9 BY MR. CORWIN:

10 Q. So, we've talked about your
11 investigation, we've talked about the current case,
12 we've talked about the case where you did a similar
13 test. Do you recall what year that was when you
14 did that similar test?

15 A. Um, I'll give you the exact date for
16 sure. I recall it was probably 2013, but I will
17 give you -- if I -- if it's different from that, I
18 will inform you to make sure you've got it correct.

19 Q. Great, thank you.

20 Any other work that you can think of
21 either with regard to a case or an investigation or
22 research that you have done with regard to mold and
23 beds?

24 A. Yes. The -- I've done other work for
25 Select Comfort. Again, the work that I -- other

1 work that I've done for them has been with respect
2 to a confidentiality agreement. So I don't know
3 how -- what the legal rules are for disclosure on
4 that, since I'm --

5 Q. Well, are you talking about other work
6 on one occasion or multiple occasions that is
7 subject to this confidentiality agreement?

8 A. It would be multiple occasions.

9 Q. And you were paid?

10 A. Yes, I was paid, by Select Comfort.

11 Q. And do you know how much total you've
12 been paid by Select Comfort? I'm looking for a
13 ballpark?

14 A. I -- oh, boy.

15 Q. Over the years I'm talking about?

16 A. Um, let's see, I'm going to give you a
17 range. It's -- it's more than 5,000, but less than
18 50,000, because I'll give you -- that's a big
19 ballpark, but I'm pretty sure it's not -- it's less
20 than that, and I'm pretty sure it's not under that,
21 so --

22 Q. But you would have those records at
23 home or someplace, at your office, someplace?

24 A. Yeah. I would have to go through all
25 of that to kind of make sure that that's accurate;

1 and if requested and if it's legally appropriate, I
2 can give you the rough total.

3 Q. You may not be aware of this, but
4 there is a protective order in place in this case,
5 which prevents us from disclosing things that are
6 marked confidential to anybody but a very limited
7 circle.

8 Given the fact that there's a
9 confidentiality agreement and protective order in
10 place, can you please tell me what those multiple
11 occasions were in which you have done work for
12 Select Comfort?

13 MS. FISHER: Let me object. I'd like
14 to go off the record and find out. I have a
15 feeling that these are like NDAs or R&D stuff. I
16 just want to find out what he's got in his head and
17 then we'll --

18 MR. CORWIN: Well, here's the problem.
19 He's under oath right now, and I want to know what
20 he's got in his head. You can designate it as
21 confidential. There's nothing I can do about it if
22 it's designated other than comply with the order.
23 So I'd like an answer without a break.

24 MS. FISHER: Well, this is also not a
25 fact deposition. So, to the extent that this bears

1 on his credentials as an expert in this case,
2 that's one thing. But this isn't a fishing
3 expedition for fact-finding.

4 MR. CORWIN: Oh, sure it is. This is
5 a deposition of an expert, and you don't have the
6 black robe on, so you don't get to make those
7 decisions.

8 BY MR. CORWIN:

9 Q. So, can I have an answer to my
10 question, please?

11 MS. FISHER: We're not going to delve
12 into just blanket facts, information about Select
13 Comfort.

14 MR. CORWIN: Yes, we are, because
15 it's --

16 MS. FISHER: But it's not --

17 MR. CORWIN: Because it goes to his
18 bias.

19 MS. FISHER: That is not what the
20 purpose of this deposition is.

21 MR. CORWIN: You don't --

22 MS. FISHER: And I'm not going to
23 allow --

24 MR. CORWIN: You don't --

25 MS. FISHER: And that's why I want to

1 talk to him to find out --

2 MR. CORWIN: I don't want any talks.
3 I want him to testify under oath. You don't get to
4 decide what I ask your expert and what I don't.

5 MS. FISHER: I get to take a break and
6 talk to him and find out -- I can protect the
7 interests of my client and make sure that he's not
8 disclosing information that they would not want
9 disclosed that goes beyond what the court ordered
10 in the protective order.

11 MR. CORWIN: I disagree, and I think
12 what you're going to do is sanctionable.

13 MS. FISHER: Really?

14 MR. CORWIN: Yes.

15 MS. FISHER: Get the Judge on the
16 phone, I'm happy to ask him.

17 MR. CORWIN: No.

18 MS. FISHER: Because this is not --

19 MR. CORWIN: I am not.

20 MS. FISHER: This is not one of those
21 situations in which I'm going to let you do a bunch
22 of discovery that you didn't do before in the
23 litigation and you're going to try to get through
24 this witness, because he doesn't know the ins and
25 outs of Select Comfort, but you're going to get him

1 to try to say a bunch of stuff.

2 I want to know exactly what he's got
3 in his head. It might be fine, and we'll come back
4 and he'll testify.

5 MR. CORWIN: And I object to you doing
6 that. I want an answer to my question.

7 MS. FISHER: Off the record, or you
8 can keep it running if he wants to run his time. I
9 just want five minutes. I want to find out what
10 he's got in his head. Let's go.

11 THE WITNESS: Okay.

12 MR. CORWIN: And I'd like to note that
13 there's a question pending.

14 (Break from 10:34 to 10:35.)

15 MS. FISHER: Okay. I'm comfortable,
16 he can testify.

17 MR. CORWIN: So before you give your
18 answer I'm going to make a record that over my
19 objection Ms. Fisher stopped the deposition, took
20 the witness outside, talked to the witness about
21 what his answer or answers could be and then came
22 back, while he was under oath and with the question
23 pending. Now, go ahead, please.

24 MS. FISHER: I will also note that I
25 did not talk to the witness about his answer, what

1 his answers would be, I asked him about the topic
2 he had in his head, to determine whether or not
3 that would be appropriate for him to talk about
4 today.

5 **THE WITNESS:** So, I think, given the
6 passage of time, if you could restate the question,
7 that would help me give you an accurate answer,
8 sir.

9 **MR. CORWIN:** Can you read the
10 question, please?

11 (Whereupon, the court reporter read
12 back the following question: "You may not be aware
13 of this, but there is a protective order in place
14 in this case, which prevents us from disclosing
15 things that are marked confidential to anybody but
16 a very limited circle. Given the fact that there's
17 a confidentiality agreement and protective order in
18 place, can you please tell me what those multiple
19 occasions were in which you have done work for
20 Select Comfort?")

21 **THE WITNESS:** Okay. So you would like
22 me to offer a characterization of the work that I
23 did?

24 **BY MR. CORWIN:**

25 Q. I want you to describe the work that

1 **they had a water event in -- this is three broad**
2 **categories. They had a water event in their**
3 **building, and I assisted with figuring out what**
4 **water-damaged materials were in the building so**
5 **that we could help with them removing the**
6 **water-damaged materials.**

7 Q. Have you described for me, in general
8 terms, other than the two cases that we've
9 previously discussed and your investigation into
10 the 101 mattresses, have you described for me the
11 work that you've done for Select Comfort?

12 **A. As I recall right now, there was some**
13 **additional work. I actually went out to -- at**
14 **least on two occasions, and there may be another**
15 **one, where I've gone to actual homes of Select**
16 **Comfort users who had concerns about their**
17 **mattresses and I took air samples, and it was part**
18 **of QC, we were trying to determine if there was**
19 **problems in their homes; and, then, I also did work**
20 **attempting to set up an experiment. So I did**
21 **samples in an area where would this be an**
22 **appropriate place to aggressive test a mattress to**
23 **see if it would be a very -- an environment that**
24 **would be very conducive to mold growth and it would**
25 **be a good place to attempt to see if the quality**

1 you did, yes?

2 **A. Okay, all right. Select Comfort works**
3 **on quality control and doing methods to prevent**
4 **fungal growth on their material. So I assist them**
5 **in their -- the work that I've done has been to**
6 **assist them in their quality control with respect**
7 **to that they stress their beds with tremendous**
8 **amounts of water and run the tests for 90 days, and**
9 **I assist them to see if there are any cases where**
10 **somebody or some -- there was -- if there was**
11 **insufficient antimicrobial added to a particular**
12 **material, so identify and say, yep, this particular**
13 **one they messed up with their quality control and**
14 **we need to -- we need to make sure that they've got**
15 **additional antimicrobial added to this. So I'll do**
16 **the testing for that.**

17 **I'll also do -- when they want to set**
18 **up a brand-new chamber area, I'll do some testing**
19 **to say, okay, this is clean enough so that you can**
20 **restart work where you're going to do aggressive**
21 **product control; and, then, I also assist in**
22 **determining, let's say, background levels in places**
23 **where they're working so that they can see if**
24 **there's any problem with a building that they're**
25 **planning on using; and, then, the last one is that**

1 **control worked well.**

2 Q. Where was that?

3 **A. That was in a -- like a crawl space, a**
4 **damp crawl space.**

5 Q. Of somebody's home?

6 **A. Yeah.**

7 Q. So let's talk about part of the QC
8 with regard to the antimicrobial substances. When
9 did you first start doing that type of work?

10 **A. I don't have the specific date. The**
11 **original -- I was originally contacted, I believe,**
12 **through Aspen Research, which I believe did**
13 **research, quality control research through Select**
14 **Comfort, and I don't have specific dates on that.**
15 **I can provide that to you at a later date, but I**
16 **don't have a specific date.**

17 Q. You can't give me a general date, if
18 it was 2005, 2010, 2012, 2000?

19 **A. Well, let's see, it was prior to 9/11.**
20 **So it would be prior to 2001.**

21 Q. Now, when you participate in these
22 90-day evaluations that you talked about --

23 **A. Right.**

24 Q. -- to determine whether mold can grow
25 in a Select Comfort bed, you're just not looking

1 for Cladosporium, are you?
 2 **A. Ah, no. The -- and -- no, and looking**
 3 **at the whole system. So occasionally we'll find**
 4 **that, like, the sheets that are put on the bed by**
 5 **various manufacturers, sometimes the sheets really**
 6 **get moldy and they tend to be more problematic than**
 7 **the beds themselves. So we have to figure out**
 8 **what -- what's an appropriate sheet to use on the**
 9 **bed that --**
 10 **Q. But my question was, when you're doing**
 11 **that --**
 12 **A. Yeah.**
 13 **Q. -- testing for mold --**
 14 **A. Yeah.**
 15 **Q. -- for part of the quality control,**
 16 **that's what QC stands for, correct?**
 17 **A. Yes, uh-huh.**
 18 **Q. You're not just testing for**
 19 **Cladosporium, there are other molds that you're**
 20 **testing for?**
 21 **A. That's correct, and -- that's correct.**
 22 **Q. And I've seen some of them, okay, I**
 23 **understand what you're talking about, and I don't**
 24 **have one in front of me, but I know you're testing**
 25 **for Aspergillus, correct?**

1 **A. I'm testing for a wide variety. I**
 2 **just don't recall if -- if I -- at that point if I**
 3 **recall if I found the -- that organism growing on**
 4 **material in the bed. So if I do, upon reflection**
 5 **looking at the reports, note that that was found,**
 6 **then I can revise that testimony, but I don't**
 7 **recall specifically.**
 8 **Q. And the testing protocols that you**
 9 **followed, those were designed by Select Comfort?**
 10 **A. Let's see, yeah. I -- I, in fact,**
 11 **helped -- helped work with them to figure out.**
 12 **I -- I guess I should add one other**
 13 **test that I did do is I did testing on small**
 14 **sections of chamber material in conjunction with**
 15 **Aspen, and we were trying to figure out what would**
 16 **be the best way to rapidly attempt to do QC testing**
 17 **so that we could get it done, let's say, in a month**
 18 **instead of having to go out nine -- you know, three**
 19 **months.**
 20 **Q. When did you do that?**
 21 **A. That would -- I believe would be prior**
 22 **to -- I think that would be prior to 9/11. I can't**
 23 **give you the exact date, but I would put it in --**
 24 **I'd wet it down, put it in a plastic container and**
 25 **we're trying to get -- and Aspen was doing similar**

1 **research at the time to see how -- see if they**
 2 **could get anything to rapidly grow, or if we had to**
 3 **spread spores on it and see if we could try to get**
 4 **it grow. It was much more difficult than I**
 5 **anticipated to get it to grow.**
 6 **Q. I just asked you when you did it?**
 7 **A. Oh, sorry.**
 8 **Q. So, moving on, when you do this**
 9 **quality control and you do these experiments,**
 10 **you're not differentiating between a single chamber**
 11 **and a dual chamber mattress, are you?**
 12 **A. Um, I -- I'm trying to recall. I**
 13 **can't recall if I did many dual chamber, I know**
 14 **I've done a lot of single chamber.**
 15 **Q. But as far as the conditions for**
 16 **growing mold or not, the way the mattress, the bed**
 17 **system performs, it doesn't matter whether it's a**
 18 **single or a dual chamber, the conditions are the**
 19 **same, correct?**
 20 **MS. FISHER: Objection, calls for**
 21 **speculation.**
 22 **THE WITNESS: I -- I -- I guess I**
 23 **can't say because they are slightly different in**
 24 **the way that they're put together, because one**
 25 **typically has a -- sometimes it has a foam piece,**

1 but other times they're -- they usually have a foam
 2 piece going down the middle. So they're -- they're
 3 slightly different.
 4 **BY MR. CORWIN:**
 5 **Q. Sure. But as far as where a person**
 6 **sleeps -- and you can appreciate that we mostly**
 7 **sleep on the same place on our beds every night,**
 8 **right?**
 9 **MS. FISHER: Objection, calls for**
 10 **speculation.**
 11 **THE WITNESS: I don't know how --**
 12 **BY MR. CORWIN:**
 13 **Q. You don't know?**
 14 **A. I don't know how people sleep.**
 15 **Q. But assuming people do sleep --**
 16 **A. Yes.**
 17 **Q. -- generally in the same place --**
 18 **A. Uh-huh.**
 19 **Q. -- every night on their bed, if it's a**
 20 **dual chamber they're sleeping on one chamber that**
 21 **is constructed the same way as a single chamber,**
 22 **correct?**
 23 **MS. FISHER: Objection, calls for**
 24 **speculation.**
 25 **THE WITNESS: I don't know -- I don't**

1 know how -- I'm not privy to the exact
2 manufacturing process with respect to one versus
3 two.

4 **BY MR. CORWIN:**

5 Q. You've never differentiated, said I
6 need to test -- for this to be valid for your
7 investigation, your quality control, you've never
8 said I need to do both a single chamber and a dual
9 chamber bed, have you?

10 **MS. FISHER:** Objection, misstates
11 prior testimony, misunderstands prior testimony.

12 **MR. CORWIN:** No, it doesn't.

13 **THE WITNESS:** I don't know if I ever
14 have, sir, and I'd have to think back. I can't
15 recall if I've ever made that distinction.

16 **BY MR. CORWIN:**

17 Q. So you indicated you went into a
18 couple of homes?

19 A. Yes, I did.

20 Q. Where were those homes?

21 A. I don't know the precise location.

22 One was north metro, and I think another one was
23 west metro. There may have been another one, but
24 those are the two that I recall.

25 Q. Do you recall the circumstances as to

1 why you were asked to go into those homes?

2 A. Um, one -- let's see, one person was
3 concerned about their environment and also,
4 apparently, their bed; and so we looked at the
5 environment in that place and they had a crawl
6 space underneath that was -- had mold growth in it,
7 and I -- so I did a general investigation for them
8 and said we got an issue with the crawl space and
9 you aren't -- you aren't keeping it up, it's got
10 moldy cardboard and everything.

11 Q. But before you go to the next one?

12 A. Sure.

13 Q. Did you look at the bed that was
14 involved?

15 A. Yes, I did.

16 Q. Did it have mold?

17 A. I can't -- I'm trying to recall if --
18 if it did. I will say -- let's see. I'm -- let's
19 see. I believe -- I want to make sure I'm accurate
20 on this. I believe I -- I -- I will --

21 **MS. FISHER:** If you --

22 **MR. CORWIN:** Let him answer.

23 **MS. FISHER:** If you don't recall, you
24 don't recall.

25 **MR. CORWIN:** Don't instruct him.

1 **THE WITNESS:** I'm -- okay. Yeah, this
2 is a bunch of years back, so I'm trying to -- let's
3 see, give me a moment. I can't recall, and I would
4 like to be able to say I did, I can't recall if --
5 for a hundred percent certain, which I'd like to
6 be, whether I took a sample from that chamber. I
7 know I took an air sample in the location where the
8 bed was.

9 **BY MR. CORWIN:**

10 Q. Well, it makes sense, does it not,
11 that there was mold in the bed or Select Comfort
12 would not have gone to the expense of sending you
13 in there to test the air, correct?

14 **MS. FISHER:** Objection, calls for
15 speculation.

16 **BY MR. CORWIN:**

17 Q. Doesn't that make sense?

18 A. I don't know. I would -- what I --
19 what occasionally happens is individuals will
20 suspect that there is, and given their level of
21 expertise with respect to -- or the general
22 public's expertise with respect to differentiating
23 between discoloration and mold that they would have
24 said we sus -- I think an accurate term is the
25 homeowner suspected that there might be mold

1 growth. That would be accurate.

2 Q. Was the homeowner claiming injury, do
3 you recall?

4 **MS. FISHER:** Objection. This is
5 starting to get into a fact deposition, which we're
6 not here to do.

7 **THE WITNESS:** I don't know.

8 **BY MR. CORWIN:**

9 Q. But your best recollection is, you
10 can't say with 100 percent certainty, I understand
11 that, but your best recollection is that there was
12 mold in that mattress and --

13 **MS. FISHER:** Objection.

14 **BY MR. CORWIN:**

15 Q. -- that house --

16 **MS. FISHER:** Misstates testimony.

17 **BY MR. CORWIN:**

18 Q. -- where you went in to test?

19 A. I don't know. I do know that -- that
20 there was suspect -- the homeowner -- it would be
21 accurate to state that the homeowner suspected that
22 there was mold growth.

23 Q. When was the second instance where you
24 went into a home?

25 A. I don't recall the date. It was a --

1 a house that was in fairly good -- it was a lot of
2 blues in it, and then we took a look -- the bed was
3 unremarkable. I don't recall if I saw any mold on
4 that bed. The downstairs was a mess. They had
5 storage, and there was problems with the storage
6 area, and there were water leaks down there. But
7 that's one I don't recall if there was any growth
8 on the material at all.

9 Q. Any other instances where you
10 investigated mattresses or homes -- let me rephrase
11 that.

12 Any other instances that you can
13 recall where you investigated beds or homes from
14 users of Select Comfort beds?

15 A. I did a -- an investigation unrelated
16 to any work with Select Comfort or Oppenheimer, and
17 it was a general inspection of a home.

18 Q. Somebody else hired you to do that?

19 A. The homeowner hired me to do that.

20 Q. Any other instances you can think of
21 where you investigated a bed or a home with regard
22 to mold growth?

23 A. Um, there may be other ones, but as
24 I'm searching the cavities of my brain I'm not
25 finding it right now. I'd like to be more helpful,

1 but my memory isn't a hundred percent.

2 Q. Have you ever given any advice to
3 Select Comfort or Oppenheimer with regard to
4 whether a warning should be issued to the users or
5 purchasers of Select Comfort beds or the content of
6 it, discuss the content of any such warning that
7 might be issued to users or purchasers of Select
8 Comfort beds?

9 A. I don't recall doing that.

10 Q. Did you videotape any part of your
11 experiment in this case?

12 A. Not in this one. I did in the
13 previous study.

14 Q. Does that videotape still exist?

15 A. Um, I'm not sure if that does. If it
16 would, it would be on the hard drive of my computer.

17 Q. Will you check for me, please?

18 A. Yes, and I will disclose if it's
19 legally allowed.

20 Q. Now, when you went to the break --
21 First of all, we took a brief break before there
22 when you went to the bathroom. Did you talk to
23 Ms. Fisher during that break?

24 A. Yes, briefly.

25 Q. Did you discuss any of the questions

1 that had been asked or any of your testimony?

2 A. We discussed the fact that -- mostly
3 your demeanor.

4 Q. Anything else?

5 A. I'm trying to think. Nothing --
6 nothing that I recall being specific to the case.
7 It was more things seem to be going okay, just be
8 honest with your answers and -- I would like to
9 recall more on it, but that's the general -- and
10 then I went to the bathroom.

11 Q. And then when you took a break when my
12 question was pending earlier, you discussed this
13 specific question that I had asked, correct?

14 A. It was --

15 Q. With Ms. Fisher?

16 A. The main thing is she asked me what
17 was the bulk of the work that you did, and I just
18 said it was primarily QC work, and she says, well,
19 that's fine to discuss.

20 Q. Anything else that you told her?

21 A. That was, essentially, it. I said I
22 was doing QC work, and she said that was fine to
23 discuss.

24 Q. Okay. I'd like to ask you a few quick
25 questions.

1 MR. CORWIN: How much time have I been
2 going so far?

3 (Discussion off the record.)

4 BY MR. CORWIN:

5 Q. You don't have your reports in front
6 of you?

7 A. That is correct, sir.

8 Q. So if I asked you questions about your
9 report, can you do them from memory or would you
10 like to have copies of your report in front of you?

11 A. I would be happy to have copies of my
12 report in front of me if you have them.

13 Q. So I'm handing you a copy of your
14 original report first.

15 A. All right, thank you.

16 Q. I don't know if we need to mark it,
17 and --

18 MS. FISHER: You don't need one for
19 me, I've got one.

20 MR. CORWIN: No, I know. What I'm
21 looking for is a second copy of his rebuttal
22 report, and I'm having trouble putting my hands on
23 one that doesn't have my notes. So if we get into
24 it and you need a copy, we'll get you one. Okay?

25 THE WITNESS: That sounds fine. Thank

1 you, sir.

2 **BY MR. CORWIN:**

3 Q. So I have a couple questions about
4 your original report. You indicated that a patch
5 of bed chamber was cleaned, and then yeast, which
6 provided nutrition for the growth of Cladosporium?

7 A. Uh-huh.

8 Q. And then swabbed it with Cladosporium;
9 is that correct?

10 A. Yes, sir.

11 Q. Which species did you swab it with?

12 A. **We didn't attempt to speciate it. If
13 I were to give you my --**

14 Q. You don't know, do you?

15 A. **I don't know the exact one.**

16 Q. Okay. So the specific species of the
17 Cladosporium was not significant to you with regard
18 to performing this test?

19 A. **The -- what was important to me is
20 I -- I used it -- picked up the Cladosporium, we
21 had a recent air sample from a building. So I had
22 two different types that I could choose from, and I
23 picked one that had a really nice sporulation so
24 we'd get a lot of spores. So I picked the one that
25 produce -- that was a really good spore producer.**

1 Q. And the bed chamber, the five-inch
2 patch of the bed chamber you used, that was
3 provided by Select Comfort?

4 A. Yes.

5 Q. Do you know whether it had any type of
6 antimicrobial agent in it?

7 A. **I'm not sure what we -- no. We
8 attempted to -- I think in this case the bed
9 chamber material was just primarily useful as a --
10 as a surface that we could paint the yeast on. I
11 could have used a lot of other different ones, but
12 I chose to use that one since it would best we
13 could to kind of replicate the -- the conditions.**

14 Q. So what was the material made out of,
15 do you know?

16 A. **I don't know what it was made out of.
17 It was the -- it was the chamber material, and we
18 had to wash it off because it was -- there's a --
19 a -- it was kind of dusty, so we had to clear the
20 dust off of it, attempted to rinse it with -- with
21 water, and then we dried it out enough so that we
22 could put the -- the yeast extract and, then,
23 subsequently put the Cladosporium on it.**

24 Q. Did it have any type of fabric on it,
25 do you recall?

1 A. I --

2 Q. Or was it just rubber?

3 A. **I'm not sure if -- I don't know how to
4 describe if it was just -- I don't know if it's a
5 fabric material or rubberized material. I don't
6 know what the -- you're asking me something out of
7 my area of expertise. I just know it was chamber
8 material.**

9 Q. Do you still have that chamber
10 material someplace?

11 A. **I don't know if I still have that one
12 or not. I have similar material, because we --
13 we -- we were short of time, so we made up several
14 different ones and wanted to make sure at least one
15 caught so that we'd have a option to -- to do
16 additional tests.**

17 Q. When you say made several, was it
18 several from the same type of bed chamber material
19 that was provided by Select Comfort or did you use
20 other materials?

21 A. **We used -- we use all material
22 provided by the same ones. So I cut out large
23 sections. It's difficult material to cut. So I
24 cut it out, and we put it in different conditions
25 because we were trying to see which one would get**

1 **the best -- the best growth.**

2 Q. So with regard to -- and I'm going to
3 ask a series of questions with regard to the
4 materials and the way you set this experiment up.

5 Were you coordinating your efforts
6 with Mr. Barnum at Select Comfort?

7 A. **The -- the extent that I coordinated
8 the efforts with him would be construction of
9 the -- Mike Buck actually specked out the
10 construction of the -- the large enclosure. We
11 worked with Mr. Barnum to -- let's say prior to our
12 going there we asked some workers that were there
13 to turn on the HEPA filter so it would be cleaned
14 out well. We also asked them to clean the area,
15 the interior of that spot so it would be clean so
16 when we got there it would have had at least a
17 couple hours to purge. Let's see, we coordinated
18 with them to -- because we -- to get a rollator,
19 and --**

20 Q. Who did you interact with with regard
21 to getting the materials to construct the bed?

22 A. **It was part of Mr. Barnum's team. We
23 just -- we -- I don't know how they got the
24 information about what type of bed it was, but
25 apparently they got -- somebody got some information**

1 about the type of bed that the plaintiff had, and
2 then they -- again, it would probably be hear --
3 somewhat hearsay testimony, but essentially they
4 said they don't -- they didn't manufacture it.

5 So part of the delay in the experiment
6 was they had to specially manufacture that bed, and
7 then they ran into a material that they didn't
8 manufacture the foam that was originally on that
9 bed anymore. So we were given some options, and
10 they said we have a foam that's similar, it's a
11 little more porous, and it's virgin material, and
12 I -- we said, well, that -- that will be our best
13 substitute because otherwise we'd be dealing with
14 non-orig -- non-new material.

15 Q. Let's talk about that foam. You
16 indicate in your report that it's a light color
17 foam?

18 A. Yeah. It was not the -- it was not
19 the same one as the -- cause we -- we tried but we
20 couldn't get, you know, that -- that exact same
21 one. So we tried our best to get something that
22 would as close as possible represent it.

23 Q. And you indicated that you believed --
24 and I'm looking at the paragraph on --

25 A. Are we still on page 1?

1 Q. Yes, still on page 1, the paragraph
2 that starts with Select Comfort in the middle
3 there, you said, you identified the foam that was
4 used on Ralph Simon's bed to be black foam; is that
5 right?

6 A. Yeah. It was darker, darker color. I
7 guess somebody would look at it and -- maybe look
8 at it and say it was gray, but it was a dark color
9 foam.

10 Q. Well, you put black. That's much
11 different from gray, isn't it?

12 A. Yeah.

13 Q. So is it your belief it was black
14 foam?

15 A. It's hard to tell from the picture, so
16 I -- because I'm basing it on what I saw, and it
17 was either -- would either be characterized as
18 black or gray, and I chose black.

19 Q. How do you know it was more porous,
20 the test material you used, as compared to the
21 mattress, the foam that was on Ralph Simon's bed?

22 A. I was relying on the -- relying on
23 the -- Mr. Barnum's team to provide that
24 information. It would -- you'd have to ask -- you
25 know, have -- you could have separate tests done on

1 that type of foam to find out if that, in fact, was
2 the case. We just relied on -- on that.

3 Q. Do you remember the individual that
4 told you that?

5 A. It was a member of Mr. Barnum's team.

6 Q. The rollator that you used, what were
7 the dimensions of it?

8 A. I don't have -- I don't -- I've never
9 specifically measured it. It's the -- it's the
10 industry standard. So it -- oh, let's see. I'd
11 have to measure it to tell you, sir.

12 Q. As you sit here today, you don't know?

13 A. I don't know the exact.

14 Q. What was the weight of the rotate --

15 A. I'd have to measure it.

16 Q. I'm sorry, I want to get this right.
17 Rollator?

18 A. I'm not sure. It's the standard
19 weight for it. I believe it's -- the actual
20 rollator part I believe it's somewhere around --
21 I'll give you a ballpark range, be somewhere
22 between 200 and 400 pounds, but it's -- yeah.

23 Q. When you were rolling the rollator
24 over the bed during your testing, was the full
25 weight of the rollator on the bed or was it less

1 than that?

2 A. I don't know if it was the full weight
3 or not. It -- it was compressed, at least at the
4 end it was compressed down about like this
5 (indicating), so it --

6 Q. When you say -- I don't want to
7 interrupt, but I want to make a record.

8 When you say it was compressed, you
9 had your hands about eight, ten machines apart?

10 A. I'm going to ballpark it because I'd
11 have -- I'd have to look at it. I may have -- you
12 asked specifically for video, I may have a photo of
13 it, so that would -- of the compression on the end,
14 so that may help provide some information that
15 would be helpful to you, but it was -- I don't
16 think there's any photos that are in that document
17 that would be helpful, but if you wanted that
18 information that would be where we could get it.

19 Q. How fast did the rollator move over
20 the bed?

21 A. Let's see (indicating). The cycle for
22 it was more than a second but less than five
23 seconds, to give you the appropriate range.

24 Q. And when you rolled it, it went from
25 one length of the bed to the other, it didn't stop

1 and move back and forth or anything like that, did
2 it?

3 **A. No. It rolled and then went back**
4 **(indicating).**

5 Q. So, for the record, again, you're
6 using your hand, you're putting one hand stationary
7 and you're moving with your other hand at an even
8 pace to the end. That's what the roller did, and
9 then it moved back at the same pace?

10 **A. Yeah, to wherever the stopping point**
11 **was, and I'd have to look at the pictures to be**
12 **exact about the precise stopping point, and then it**
13 **rolled back, and then it would be near the end of**
14 **the -- so it would be kind of on the edge of the**
15 **bed.**

16 Q. Now, you identified that this was a
17 standard industry rollator. What industry are you
18 referring to?

19 **A. The mattress manufacturing one. It's**
20 **a -- the rollator at least -- I looked online,**
21 **because it's not my specific area of expertise, but**
22 **a rollator is used by, let's see, bedding companies**
23 **to test the durability of the bed. So they'll**
24 **attempt to stress a bed for, let's say, ten years**
25 **worth of life in a shorter period of time than**

1 **actually doing ten years of mattress life.**

2 Q. Do you have any of that literature or
3 what you reviewed in your file someplace?

4 **A. I don't have it in the file. It would**
5 **be something that you could probably pick up off**
6 **the -- off the Internet.**

7 Q. Well, I'm more interested in where you
8 picked it up?

9 **A. That's where I picked the information**
10 **up, would be on the rollator site, and I looked at**
11 **it, and then I have seen at the Select Comfort**
12 **where they are testing the beds, and they have this**
13 **rollator and manufacture a bed, and they're using**
14 **it and they're going back and forth over it to test**
15 **the durability of the bed (indicating).**

16 Q. This warehouse, was it on a Select
17 Comfort property?

18 **A. It was a rented location, as I**
19 **understand.**

20 Q. And, then, who constructed the chamber
21 to put the bed in and do the test?

22 **A. That would be Mr. Barnum's team that**
23 **did the construction.**

24 Q. Did you give them any specifications
25 on how it should be constructed?

1 **A. Mike Buck gave them the specifications**
2 **on that.**

3 Q. Tell me who Mike Buck is?

4 **A. Mike Buck is the person that worked**
5 **with me on this study. He -- the consulting**
6 **company that he works for is I believe Mike Buck,**
7 **Inc. We are also colleagues -- and this is**
8 **unrelated somewhat to this -- at the University of**
9 **Minnesota, and we do similar work there. But**
10 **the -- and I want to clarify, the work that I'm**
11 **doing and Mr. Buck is doing is part of a separate**
12 **consulting thing that we're doing and not in any**
13 **way affiliated with the University of Minnesota.**

14 Q. I'm sure the University of Minnesota
15 appreciates that disclaimer.

16 **A. Right. I have to say that because I**
17 **don't want to misrepresent myself.**

18 Q. So Mike Buck has his own consulting
19 firm?

20 **A. That's correct, yes.**

21 Q. And does he get involved in litigation
22 consulting, also?

23 **A. I don't know. I don't -- I -- I guess**
24 **you'd have to ask him. I don't recall if he does a**
25 **lot of work on -- most of the stuff that he does is**

1 **fungal identification for other different**
2 **companies, and he also assists on asbestos work,**
3 **and he also does a lot of work with hospitals**
4 **around the country on infection control issues. He**
5 **doesn't -- as a rule, in my conversations with him,**
6 **he doesn't do a lot of legal work, mostly it's**
7 **consulting, trying to help -- help other --**

8 Q. So in this case you were asked to
9 provide your testimonial experience either by way
10 of deposition or trial for the last four years, and
11 we were told you haven't given a deposition or
12 testified in trial in the last four years; is that
13 correct?

14 **A. That's correct. I have previous to**
15 **that, but it -- you looked at that window of**
16 **opportunity, and I hadn't --**

17 Q. How many times do you think you've
18 given a deposition?

19 **A. I'll give you a range, if that helps**
20 **out.**

21 Q. Sure.

22 **A. And I want you to clarify it. Is it**
23 **all depositions, because I have on occasion given**
24 **depositions or testimony for the University of**
25 **Minnesota, or are you taking specifically for NG**

1 **Carlson Analytical, sir?**

2 Q. NG Carlson litigational service. I'm
3 not talking about if the University was involved in
4 something.

5 A. I just wanted to clarify.

6 Q. Yes.

7 A. Okay. It is more than five and for
8 sure less than twenty.

9 Q. Over what period of time?

10 A. That would be from -- well, one was
11 prior to incorporation. So I incorporated in -- so
12 that would be -- I'm trying to remember when I
13 incorporated. It would be on my resume. So it
14 would be like ninety --

15 Q. You have your resume in front of you,
16 if that will help you?

17 A. That will be helpful, yeah, because
18 then I can get that and give you a little bit
19 better date on that. I think that's all the way in
20 the back. Okay, vagued it out with '90s.

21 So I would say for sure since nine --
22 let's see, I didn't do any work prior to my -- or
23 testimony prior to my employment at the University.
24 So, for sure, it would be post 1988 to present.

25 Q. In those more than five less than

1 twenty depositions --

2 A. Yeah.

3 Q. -- do you know if you were ever asked
4 to consult by the attorney representing the injured
5 person, either injured because of a house property
6 claim or personal injury?

7 A. Yeah, I was. There was a -- one home
8 where the -- there was a construction defect issue.
9 It was a very large home, and they had mold growth
10 on the exterior wall, and the litigants were
11 complaining about health effects associated with
12 it.

13 I don't know if that was central to
14 the case -- or I don't believe that was central to
15 the case. They were -- they did testify to the
16 personal injury that they had, and, then, they also
17 were testifying to the inadequate disclosure on the
18 real estate piece with respect to the property. So
19 they felt that they didn't -- this goes preexisting
20 damages. There was another case --

21 Q. Wait. But before you go there --

22 A. Sure.

23 Q. -- do you recall what your opinion was
24 in that case?

25 A. My opinion was that the -- there was

1 water-damaged materials on the property and that
2 there was mold growth on those materials.

3 Q. Okay. And you were describing the
4 next one?

5 A. And, then, the next one was a -- one
6 that I didn't know what the particulars were until
7 I saw it later. They had a -- a house that was
8 under construction, and they had photos of it that
9 I was aware of. It was, essentially, the basement
10 was three-quarters under water, and they had placed
11 a house in a -- let's say in a place with a high
12 water table; and I was called in to do sampling on
13 the -- in the room where they felt that there was
14 some -- some -- somebody was experiencing some
15 discomfort when they slept there, and I found along
16 the tack strip and on the wallboard in that room
17 and, then, adjacent to it that there was fungal
18 growth and, then, I also confirmed or at least
19 associated that with elevated airborne samples
20 taken in that room that were a little bit higher
21 there than they were in the upper parts of the
22 house, and -- and I had a deposition that was
23 fairly short.

24 Q. Do you remember any of the attorneys,
25 between five and twenty, do you remember any of

1 attorneys that had retained you in any of those
2 cases?

3 A. Let's see. I got to think about the
4 one that was --

5 Q. I'm not just talking about the two you
6 said you were retained by the person injured, I'm
7 talking about all of them, if you can remember the
8 names?

9 A. I'm trying to recall the one. I know
10 the consultant that I worked as a sub to, and his
11 name was McDunna (phonetic), I don't recall his
12 first name. The other one I'm not sure if I was --
13 if I was working with Tom Conlin or not or if he
14 was an attorney that referred me to the owners of
15 this house. This is actually a third case where we
16 had, essentially, construction defect in a house,
17 and they ended up getting the house repaired; and,
18 unfortunately, the builder went bankrupt.

19 Q. Any other attorneys you can think of?

20 A. I wish I remembered the one that was
21 on that big house. I remember the people, the
22 Marks (phonetic), but --

23 Q. That was the name of the people, the
24 individuals?

25 A. The individuals who had the home.

1 Q. And the home was in the Minneapolis
2 area?
3 A. It was in the Minneapolis area, yeah,
4 a very beautiful home on a lake.
5 Q. Isn't every home in Minneapolis on a
6 lake or in Minnesota on a lake?
7 A. It would be nice. We have more than
8 our share because we have a lot of lakes.
9 And there may be some other small ones
10 in -- so occasionally I'm asked to -- an attorney
11 will ask me to offer an opinion, they'll send me
12 a -- some pieces on it and I'll say -- they'll ask
13 me does it make sense for us to pursue litigation
14 on this or not, and I'll look at it and say it
15 looks like they may have a pretty good case, I
16 think I'd probably -- from what I can see, it looks
17 like something you want to settle on, or I'll say I
18 don't say why they're -- they're generating this
19 lawsuit. But those were not depositions, they were
20 just --
21 Q. Consulting?
22 A. Yeah.
23 Q. And you've been hired by Oppenheimer
24 in the past, we talked about that?
25 A. Yes.

1 Q. Do you remember the names of those
2 cases?
3 A. Actually, no. I -- they just say we
4 need you to do some work, but --
5 Q. You don't know where the cases were
6 pending?
7 A. No, I don't. I -- I -- essentially,
8 I'm kind of a consultant. They said we need you to
9 do this kind of test, and then I do it.
10 Q. Let's go back to your report. We're
11 still on the first page. You indicate that "Select
12 Comfort no longer" manufactures "the 5000 Series
13 Sleep Number® bed." Did I read that correctly?
14 A. And that was information provided by
15 Mr. Barnum's team. I -- I don't have any
16 particular knowledge other than that I was relying
17 on their opinion.
18 Q. Do you know anything about the design
19 of a 5000 Series Sleep Number bed?
20 A. Oh, just -- it would be just from the
21 observation of the -- I'm assuming the bed that
22 they gave to us was a reasonable facsimile of one,
23 but it would be just from looking at the one that
24 we had in the -- the -- the --
25 Q. That's your assumption?

1 A. That -- my assumption would be that
2 they made something that was as best equivalent to
3 what the plaintiff was sleeping in.
4 Q. Now, you say that "All materials
5 Select Comfort used in making the bed were new."
6 A. That's correct.
7 Q. You talked about that earlier?
8 A. Yeah.
9 Q. "The black foam that was originally
10 used in the 5000 Series beds is no longer
11 manufactured. As a result, we substituted a yellow
12 foam in the test bed."
13 A. Yes.
14 Q. Do you know whether the yellow foam
15 that was used was manufactured or otherwise
16 impregnated or coated with antimicrobial solutions?
17 A. I don't have any knowledge of that.
18 Q. Wouldn't that be important for you to
19 know when you're doing this type of test, if it in
20 fact did, it could affect the test results, couldn't
21 it?
22 A. I don't know if it could, because it
23 would affect the ability -- for instance, if we
24 were attempting to grow stuff on it, it would
25 affect that. I don't know -- I don't think it

1 would affect the ability of the spores to transfer,
2 because what we're looking at in this case is are
3 we providing enough mechanical energy to get the
4 spores from this Point A up to Point B, which would
5 be the top of the mattress.
6 Q. Can you say with scientific certainty
7 that if the pad had antimicrobial substances either
8 coated on it or manufactured in it, it would not
9 affect the transfer of spores?
10 A. I think we're talking about a
11 mechanical process. The caveat would be is if
12 somehow in the coating it made it more difficult
13 for the spore to transfer. But it's, basically, a
14 mechanical process, I'm not trying to grow it.
15 Q. Well, I'm asking you, can you say with
16 scientific certainty that it didn't matter whether
17 it had antimicrobial -- it sounds like it might
18 because, at a minimum, it could close --
19 A. I wouldn't say with a hundred percent
20 certainty, no.
21 Q. I'm sorry?
22 A. I could not say that with a hundred
23 percent certainty.
24 Q. That -- okay. And just so that I'm
25 clear, you cannot say with a hundred percent

1 certainty whether it had antimicrobial agents
2 impregnated into the material or the material was
3 washed with it would affect or not affect the
4 porousness of the material?

5 **A. Right, I can't say that with a hundred**
6 **percent scientific certainty.**

7 Q. And you can't say with -- well, I
8 understand a hundred percent, but I'm asking for
9 scientific certainty, which is a reasonable
10 scientific basis. Okay. With that definition, you
11 cannot say that if it had antimicrobial agents
12 impregnated in the foam or the foam was washed with
13 it that it did not affect your testing?

14 **A. I would say that's correct, because I**
15 **don't know if it was, in fact, impregnated or not,**
16 **and I don't know the application method, if it was,**
17 **in fact, impregnated.**

18 Q. Do you know whether Ralph Simon's foam
19 topper pad was manufactured with antimicrobial
20 agents?

21 **A. I don't know that, sir.**

22 Q. And did you ask anybody from Select
23 Comfort?

24 **A. I didn't ask that question.**

25 Q. You did not analyze the porosity of

1 the foam, did you?

2 **A. No, I didn't.**

3 Q. Talking about the next page, the test
4 method, I think we talked about this briefly, but I
5 think we can put a time on this. You say, "At each
6 hour interval, the first door was opened and then
7 closed." That's the door between the warehouse air
8 and the chamber?

9 **A. No. We had a double door setup. So**
10 **we were doing our best to minimize the amount of**
11 **out. So we opened up that door to go into it, shut**
12 **that door, and then wait for Mike Buck to -- let's**
13 **see, I got to look at the sequence on that. Yep.**
14 **So post -- post disturbing the -- the bed with a**
15 **rollator, and we brought that material in so we**
16 **could catch it when most of the mechanical**
17 **engineer -- energy was available to put the spores**
18 **up, and then we took a sample immediately after**
19 **doing the rollator.**

20 Q. Okay. Let's try this.

21 **A. Okay.**

22 Q. What type of contraption did you use
23 to sample the air?

24 **A. Okay. That would be helpful.**

25 **We used a SAS dual head air sampler**

1 **manufactured by Bio-Systems. One of the heads has**
2 **holes in it to allow deposition of particles and/or**
3 **fungal spores onto a culture plate; and, then, we**
4 **have another one where we put a separate media, it**
5 **was MEA. This one we used TSA and DG-18. This one**
6 **we used MEA. The one we used MEA had --**

7 **(Reporter's Note: Mr. Corwin's cell**
8 **phone is vibrating.)**

9 **THE WITNESS:** Do you need to answer
10 that?

11 **MR. CORWIN:** No, I do not. I'm
12 interested in your testimony.

13 **THE WITNESS:** So that one has a
14 smaller number of spores, holes than the other one,
15 and we did that because the MEA, the growth on that
16 media typically -- it grows a little faster and we
17 get a little bit more crowding on the plate, so we
18 controlled for that one and that one; and then we
19 placed the -- or Mike Buck placed the SAS sampler
20 at a location approximating where the head was,
21 so --

22 **BY MR. CORWIN:**

23 Q. Where the head was?

24 **A. In other words, where somebody would**
25 **place their head, so we put it at the front edge of**

1 **the -- the bed. If you were looking at it for**
2 **precision, the instrument is like this, so it would**
3 **be slightly higher than what a head would be. So**
4 **it would be roughly -- I'm going to put it at**
5 **approximately a little over 12 inches up on either**
6 **side. The sampler works best when held in a**
7 **vertical position, and then I also did -- we had a**
8 **particle counter that was brought in to do checks**
9 **on that, on the particle levels, and we did --**
10 **although we ended up not being able to use the**
11 **results, I did use -- and it's not reported in**
12 **here, we did use a aerosol cassette one to do for**
13 **non-viable. We placed them, essentially, at**
14 **that -- in an area approximating the location of**
15 **where somebody's head would be.**

16 Q. Do you have any pictures showing -- I
17 don't see any. I'm just asking, do you have any
18 other pictures showing where you were positioning
19 these devices?

20 **A. I don't know if I have that one. I do**
21 **have pictures from the other one, and it was**
22 **essentially we did the same design, with the**
23 **exception of this time we added the -- the aerosol,**
24 **and previously we did not have that.**

25 Q. The other one, meaning this prior

1 experiment?

2 **A. This prior experiment with the -- to**
3 **be clarify, clear, with the one-inch size as**
4 **opposed to the ten -- five-by-ten size.**

5 Q. I'd like you to turn to page 3 of your
6 report.

7 **A. Sure.**

8 Q. You indicate about two-thirds of the
9 way down that "The highest count of 4" cubic --

10 **A. Colony-forming units.**

11 Q. Colony-forming units, thank you, per
12 "cubic meter contributes less than 5% of the
13 average indoor fungal concentration of Cladosporium
14 spp. present indoors and is not considered a
15 significant indoor source." What is your source
16 for that statement?

17 **A. That would be the EMLab P&K samples,**
18 **and I think they're -- or EM -- EMLab P&K, that**
19 **one, and, then, there was another one of Shelton**
20 **was a -- Profiles of Airborne Fungi in Buildings**
21 **and Outdoor Environments. So I -- let's see, in**
22 **Buildings and Outdoor Environments, so that would**
23 **be No. 8, which was -- I referenced the outdoor,**
24 **but there was also indoor ones on that.**

25 Q. Well, you don't have a --

1 do you mean when you say "is not considered a
2 significant indoor source"?

3 **A. Okay. I can rely on my personal**
4 **experience, and it's -- of sampling indoor**
5 **environments for about 25 years, and Cladosporium**
6 **is the most common mold I see in indoor air**
7 **samples. So it's -- it's -- with the exception of,**
8 **like, the middle of winter, I'm invariably finding**
9 **some levels of Cladosporium in the indoor**
10 **environment. Typically, we're going to see it in**
11 **the range of 100 to 200 colony-forming units in the**
12 **indoor environment; and in the outside the range**
13 **is -- and I'm talking both culturable and not**
14 **culturable. The culturable would be the agar**
15 **plates. The nonculture would be like the aerosol**
16 **samples. And outdoor I would be seeing anywhere**
17 **between -- it's extremely rare to do an outdoor air**
18 **sample, with the exception of during wintertime,**
19 **not to find Cladosporium, and the counts would**
20 **typically be in the range of minimum of about a**
21 **hundred spores per cubic meter to several thousand**
22 **and then a range that's in -- it's typically in the**
23 **range -- the 95th percentile is typically around**
24 **the -- about six thousand, and about the 5th**
25 **percentile is close to about a hundred.**

1 **A. Yeah. I should have had a reference**
2 **point.**

3 Q. You don't have a reference point
4 there?

5 **A. Yeah.**

6 Q. But that's your testimony now, is
7 you're referencing the --

8 **A. I believe that is correct, and I**
9 **will --**

10 Q. Let me finish the question, please.

11 **A. Sure, go ahead.**

12 Q. I'm sorry.

13 You don't have a reference source
14 identified in your report, but now you're
15 testifying that you believe it was from the EMLab
16 P&K report under footnote 5 and the one identified
17 at footnote 8?

18 **A. I would have to double-check on that,**
19 **and I can provide that to make sure that we are**
20 **accurate with respect to that. It was not**
21 **footnoted, so --**

22 Q. Because you a little bit later, and I
23 wanted to ask you about this, but --

24 **A. Uh-huh.**

25 Q. -- let me back up a little bit. What

1 **So it's incredibly common to find it.**

2 **You can find it in carpet dust and -- so it -- that**
3 **number ballparks with what we've -- what I've seen**
4 **over a quarter of the century sampling for this**
5 **organism.**

6 Q. Are you aware of any sampling that was
7 done at Ralph Simon's house?

8 **A. Um, I am aware that -- I'm not exactly**
9 **aware of the technique that was done. I'm aware**
10 **that -- that -- and, again, I don't know the**
11 **person's name, but he was the individual that was**
12 **hired by I believe Oppenheimer to do sampling. I**
13 **didn't look specifically at the technique that he**
14 **used to sample, but I'm aware that he did do some**
15 **samples.**

16 Q. Are you aware, as you sit here today,
17 what the results of his sampling was?

18 **A. I believe the technique that he used**
19 **indicated that he was surprised not to find any**
20 **during the sample period that he took, but that**
21 **would be my belief on the --**

22 Q. Fair enough. So a little bit later
23 you talk about "The median outdoor Cladosporium
24 spp. concentration in the U.S. in clear weather is
25 610 spores per cubic meter," and there you

1 reference the EMLab --

2 **A. Yeah.**

3 **Q. -- report?**

4 **A. Yeah.**

5 **Q. So in that report, this reference,**
6 **you're talking about the entire U.S.?**

7 **A. Correct.**

8 **Q. You're not talking about the Midwest?**

9 **A. In -- in that particular case,**
10 **although that guide does have stuff for areas close**
11 **to -- they don't -- they don't have enough data**
12 **particularly in St. Louis. So they have got data**
13 **on, I believe, Michigan and Ohio, but they don't**
14 **have closer, so --**

15 **Q. Actually, you say Illinois and Ohio?**

16 **A. Or Illinois, I'm sorry. Thank you for**
17 **clarifying that. I -- some Big Ten school.**

18 **Q. Could you go to your first exhibit,**
19 **and --**

20 **A. Which one is that, is that the --**

21 **Q. It's air sample results.**

22 **A. Thank you, sir, yep.**

23 **Q. I would just like a brief explanation**
24 **of what I'm looking at here?**

25 **A. Okay. Let's see, you are looking at**

1 understand what I'm looking at. Where is there an
2 error in the report?

3 **A. There is an error in -- and I've got**
4 **to double-check here and make sure. There is one**
5 **error in the report in that -- yes, double-check**
6 **here, that the designation -- it was a**
7 **cut-and-paste error. The designation for the**
8 **location and, then, there's an indicator of the**
9 **type of media. From 1 through 14, yeah, down to 3,**
10 **it should not say DG-18, that should be all MEA.**

11 **Q. Oh, because DG --**

12 **A. Because if you look at the --**

13 **Q. What does DG, what would it stand for?**

14 **A. Dichloran Glycerol Agar.**

15 **Q. Oh, I see.**

16 **A. And on page 2, that is what a DG-18**
17 **and TSA, so in the controls that I list at the**
18 **bottom there for MEA. So that would be an error,**
19 **it was a cut-and-paste error, that should all be --**
20 **1 through 13 should all list MEA as the -- as the**
21 **dash afterwards.**

22 **Q. I see.**

23 **A. Does that help you out?**

24 **Q. But is 14 correct or not correct?**

25 **A. Let's see, 14, where are you talking**

1 **the Exhibit 1, air sample. MEA means malt extract**
2 **agar. So that was a type of media that was used,**
3 **and that was chamber study, and the date was**
4 **May 20th, and then these -- and then I indicate**
5 **when I check the growth on the -- on the agar**
6 **plates post sampling, so that would be the topper.**

7 **The next part, location, tells where I**
8 **took the sample. The volume tells the amount of**
9 **air that was pulled through the sampler. The next**
10 **one is the normalized amount of colony-forming**
11 **units per cubic meter. In other words, if I took a**
12 **hundred liters, then whatever count I got on the**
13 **plate I'd have to multiply it times ten to get the**
14 **colony-forming unit per cubic meter for samples 1**
15 **and 2. For samples 3 and 4 and all the way down on**
16 **that page I didn't need to normalize the data**
17 **because we took a full cubic meter of air,**
18 **essentially, a thousand liters.**

19 **The next section would be the**
20 **organisms that were identified, and I think they do**
21 **see one error on the exhibit part in that it says**
22 **MEA, but it should not say that, it should just say**
23 **air samples because they look -- at least the media**
24 **that's listed there --**

25 **Q. Where do you see that? I just want to**

1 **about?**

2 **Q. I was just looking at 1 through 13,**
3 **the way I understood your --**

4 **A. Oh, 1 through 14, yeah.**

5 **Q. One through fourteen is?**

6 **A. They all --**

7 **Q. Has the error?**

8 **A. They all should be MEA and, then, the**
9 **control plates that we have are MEA. So that**
10 **should all be MEA and not DG-18.**

11 **Q. And, then, the next one was the TSA?**

12 **A. The TSA, slash, DG-18, yep.**

13 **Q. And what does the TSA slash --**

14 **A. Trypticase soy agar, and the DG-18 is**
15 **Dichloran Glycerol Agar. The DG-18 is used because**
16 **of the growth characteristics on it, it grows a**
17 **little bit slower and allows for identification of**
18 **the -- the colonies a little bit better because**
19 **they don't tend to overcrowd on the plate. TSA is**
20 **a standard one used for both bacteria and -- and**
21 **fungus organisms.**

22 **Q. So here's my question for you. Under**
23 **both the MEA and the DG-18 TSA, you've got multiple**
24 **dates that you checked the samples, and then you**
25 **record the numbers --**

1 A. Uh-huh.

2 Q. -- of the organism and you identify
3 the organism found. Which days were these found?
4 Can you separate from May 26th through May 29th and
5 6/3?

6 A. The -- you can't separate that.
7 The -- what the -- the 26 was a preliminary count,
8 and I did a preliminary -- the growth of the
9 colonies in some of these cases would be enough to
10 get a count, but they would need to go a little bit
11 longer for the identification. So I would see
12 something that looked presumptively like
13 penicillin, but then I'd have to do a tease tape
14 sample after it grew up enough so I had enough
15 spores to see if it was growing.

16 Q. Did you record -- like I saw you bring
17 in a notebook today.

18 A. Yeah.

19 Q. Did you record any type of notebook or
20 on the computer what you saw on each one of those
21 days?

22 A. It would be notes that would be -- in
23 two particular cases, if there was no change I
24 wouldn't see any change on it. I did --

25 Q. Did you record that, though?

1 what the particle levels were in the -- I'd say the
2 rollator area and, then, the warehouse area, and
3 then I would periodically check it with a -- a HEPA
4 filter on the end of the intake for the particle
5 counter, and it was a check to see if -- for us, if
6 we were doing a good job of getting the particle
7 levels low enough so that we were in -- it was low
8 enough so that we could -- we wouldn't get all the
9 clutter from what was in the warehouse in the
10 chamber areas, we would get at least some idea of
11 what was going on, because we were sampling at
12 really high volumes of -- you know, a thousand
13 litters, and if we took a sample of that like in
14 the warehouse, it would be completely overloaded,
15 so I wouldn't be able to read -- do an accurate
16 count. So I wanted to make sure the particle
17 levels were low enough so we could get an accurate
18 count.

19 Q. Could you explain that a little bit
20 more, please?

21 A. Sure. We used HEPA-filtered air
22 that -- I guess we'll have to come up with a --
23 let's say that -- we'll call it roughly the clean
24 room. We used HEPA-filtered air, brought it into
25 the clean room to purge it out to reduce particle

1 A. Yeah; and, then, if I -- and, then, in
2 some cases where I -- there was a change, I -- at
3 least that I recall on this one I wrote some -- a
4 slash in red and changing or at least making the
5 identification because penicillium and Aspergillus
6 look real similar when they start growing, but then
7 when I'm able to separate it out, then I'm able to
8 separate out between penicillium and Aspergillus.

9 Q. My question was about your notes.
10 Where are those notes?

11 A. I'm not sure exactly. I believe
12 they're in a file cabinet.

13 Q. Did you give them to Oppenheimer or
14 Select Comfort?

15 A. No. The only thing I gave to them was
16 this (indicating).

17 Q. Then there is another exhibit
18 labeled --

19 A. Exhibit 2.

20 Q. Yes, Exhibit 2.

21 A. Yeah.

22 Q. And it says particle counts?

23 A. Yep.

24 Q. What are you doing here?

25 A. What we're doing is checking to see

1 levels, and we positively pressurized the room
2 while we were doing it so we'd prevent particles
3 that were in the adjacent warehouse area, at least
4 when we're purging it, from entering into the room.

5 Q. When you purged it, would you purge
6 particles?

7 A. Yeah, we'd purge particles because it
8 would be pushing -- we would be providing clean
9 HEPA-filtered air into the space and push out the
10 other particles. We did that initially at the
11 start of the test, and then the other time that we
12 purged it was after we inserted the -- the first
13 sample because we were concerned -- you know, we
14 were exposing the chamber material to the air and
15 we put it in there and we wanted to purge it one
16 more time so that when we ran the study it would be
17 just the vertical movement of the spore through
18 the -- the mattress up to the top that we were
19 measuring.

20 Q. Where do I see that you purged it,
21 what time?

22 A. Let's see, the purge was done 5,
23 "Inserted sample - Post HEPA run for 15 minutes."
24 So we ran the HEPA filter after we inserted the
25 sample, and -- there, yep.

1 Q. At 3:08?
2 A. Yeah.
3 Q. Any other time you did the purge?
4 A. **The purge was right at the beginning**
5 **of the experiment, too, and that was done -- let's**
6 **see, that was done to clean the room out so that we**
7 **could have a low count and we could get started**
8 **right away, rather than sitting two hours and**
9 **waiting for the -- the -- the room to clean out.**
10 Q. What was unique to the design of the
11 room that it would clean itself out, if given time?
12 A. **Um, the room was a reasonable side**
13 **and we were -- size and we were able to push a**
14 **significant amount of air through. I think Mike**
15 **Buck would have the -- probably have the**
16 **information about the exact volume of air. We were**
17 **able to pressurize the space so that when we were**
18 **running it we were pushing the particles out and**
19 **you could not -- we had -- we kept the door open**
20 **slightly with the air pouring out because it was**
21 **impossible to close it and make the room -- so it**
22 **was tight enough so that we were able to push the**
23 **door out through the two doors.**
24 Q. So could you turn to Exhibit 4 for me,
25 please?

1 A. **Sure.**
2 Q. Pictures of I believe what you've
3 described as mold?
4 A. **Yeah.**
5 Q. Keep going.
6 A. **Exhibit 3?**
7 Q. I'm sorry, 4.
8 A. **Four.**
9 Q. Yes, the one with the petri dishes,
10 keep going.
11 A. **Oh, okay. Well, the one before that**
12 **gives you some idea what the rollator -- about**
13 **how -- how depressed it was.**
14 Q. Gotcha.
15 A. **In answer to your question that you**
16 **had. But then the other one, page 4 also gives you**
17 **some type of idea, and that's Mr. Buck.**
18 Q. Okay.
19 A. **That isn't how we ran, but these were**
20 **samples -- pictures taken afterwards, after we'd**
21 **completed the --**
22 Q. I see.
23 A. **Oh, and No. 5 also gives you a**
24 **picture.**
25 Q. Okay.

1 A. **So now we're going to -- you're going**
2 **to page 1, Exhibit 4, correct, sir?**
3 Q. Now, the picture -- you remind me of a
4 question. The picture right before, was that taken
5 before, during or after you ran the experiment?
6 A. **Picture No. 6 or -- the page 6?**
7 Q. The one with the door open with the
8 back of an individual.
9 A. **Yeah, that's after it was -- that's**
10 **after it was done.**
11 Q. Okay. So turn to the next page.
12 A. **Sure.**
13 Q. You got I call them petri dishes,
14 but --
15 A. **That's fine.**
16 Q. Okay. And you're showing mold, I take
17 it?
18 A. **Yeah, and they're in sequence. The**
19 **amber colored one is the malt extract agar, the TSA**
20 **is the trypticase soy agar, and the one on the end**
21 **is the DG-18 agar.**
22 Q. And that's Cladosporium?
23 A. **Right.**
24 Q. And that's what Cladosporium looks
25 like?

1 A. **Right.**
2 Q. Okay.
3 A. **And, then, the photo underneath is --**
4 **I took a photo of each one of them as I took a**
5 **tease tape off of the culture.**
6 Q. Did you use your phone-with-the-flip
7 method to do that?
8 A. **Oh, no. That one I actually -- it's**
9 **better quality. I had a nice, high-end microscope**
10 **that I took and I took the photo.**
11 Q. And, then, if you go to -- keep
12 turning, please.
13 A. **Okay, yep.**
14 Q. There (indicating).
15 A. **Yes.**
16 Q. That's Cladosporium, and that's what
17 it looks like?
18 A. **We're looking at page 4?**
19 Q. Yes, sir.
20 A. **Okay. And I have the 3, slash, 1000.**
21 Q. Yes.
22 A. **The one with the dark discoloration**
23 **right under the letters MEA, that is the back side**
24 **of Cladosporium; and, then, the next one, the dark**
25 **discoloration above that blue green one and off of**

1 the middle one, that is the top view. So that's
2 the Cladosporium.

3 Q. So just so I understand --

4 A. That one and that one (indicating).

5 Q. This is the back side, and this one
6 right here, that's (indicating) --

7 A. That's the top side.

8 Q. That's the top side. And, then, the
9 bigger samples in the bottom picture, what are
10 those?

11 A. They would either be penicillin or
12 Aspergillus, and I'd have to look at the sample.

13 Q. I see, good, thank you.

14 Then if you turn to the next page,
15 sample No. 4, what are we looking at there?

16 A. Yeah. We're looking at -- well, we're
17 looking at the photomicrograph from sample No. 3,
18 and, then, from sample No. 4 we're looking at the
19 back side of the culture plate for sample No. 4;
20 and the dark discoloration underneath the word TSA
21 is the Cladosporium.

22 Q. Okay. Then the next page, the top
23 picture, what are we looking at?

24 A. We're looking at a Cladosporium spore
25 and, then, some other organisms, and, then, the --

1 A. Does that clarify?

2 Q. Sure, thank you.

3 A. Okay.

4 Q. And, then, the next page, what are we
5 looking at?

6 A. We're looking at page 7, No. 10; is
7 that correct?

8 Q. Yes.

9 A. Okay. We see a lot of black X's, and
10 those are spots where we're catching penicillium
11 and Aspergillus; and, then, the Cladosporium is in
12 the upper left, underneath that white colony.

13 Q. I see.

14 A. And, then, the reverse on that is the
15 dark discoloration to the right of the label.

16 Q. So the ones with the X are the
17 Aspergillus and the penicillium?

18 A. Yep, primarily, and I'd have to
19 double-check, but that -- yeah, because I was just
20 trying to get some -- some rough counts.

21 Q. I see. And, then, the next page, 8,
22 sample 11?

23 A. Sample 11, that one --

24 Q. You have three pictures, starting with
25 the top left going across and down --

1 Q. Well, what are those other organisms,
2 can you tell?

3 A. One could be yeast or bacteria.
4 They're the brightly colored red ones, and there's
5 a little slimy yellow one, I believe, up on top.
6 The other one is --

7 Q. Is that yeast, the yellow one, also?

8 A. It could be yeast or bacteria. We
9 weren't particularly concerned about it.

10 Q. Okay.

11 A. And, then, the bluish one probably --

12 Q. Top left or bottom right?

13 A. Top left, as I look at it, probably
14 penicillium, not sure about the middle one there.
15 I'd have to re-tease tape that one; and, then, the
16 bottom lower looks like Alternaria, and I think the
17 one on the right is either penicillium or
18 Aspergillus that's right above it, the kind of
19 bluish-green one with a white perimeter.

20 Q. So you keep saying penicillium.
21 That's different than penicillin?

22 A. Oh, penicillin is the drug that's
23 produced from penicillium chrysogenum. That's the
24 one used for an antibiotic.

25 Q. I see.

1 A. Right.

2 Q. -- the one that says MEA 11/1000?

3 A. Yeah, and I want to look at that to
4 make sure that I've got the MEA, just a second.
5 Okay, okay, okay.

6 That one, 11/1000, there's a -- this
7 one, the back side of the Cladosporium is obscured
8 by the -- the label. So it's on the upper right
9 side of the label.

10 Q. I see.

11 A. And, then, if you go the reverse, it's
12 the one -- there's a bunch of -- let's see,
13 probably penicillium, because they produce the
14 exudate. Do you see the kind of glistening stuff?

15 Q. Sure.

16 A. Okay. It's the one sandwiched between
17 the glistening ones, it would be upper left.

18 Q. Gotcha.

19 A. And, then, this would be the photo
20 micrograph of that organism (indicating).

21 Q. Which organism?

22 A. The Cladosporium.

23 Q. Okay, thank you.

24 A. Yep.

25 Q. And in the top right picture, do you

1 see Aspergillus in that picture?

2 **A.** I'll check -- I'm going to check the
3 results on it, because I'm not sure if it would be
4 Aspergillus or penicillium because they look
5 similar in colony. So that one is page, sample 11,
6 and this one is MEA. So sample 11 MEA, Aspergillus
7 and penicillium were both present.

8 **Q.** Okay. I'd like to ask you a couple
9 questions about your rebuttal report, if I may?

10 **A.** Sure. Is that -- oh, that's the one
11 we don't have, but we'll try from memory.

12 **Q.** It's the only one that I have, that
13 has writing on it.

14 **A.** Okay.

15 **Q.** I'm sorry.

16 **A.** That's okay.

17 **MS. FISHER:** Can I interject for just
18 a second? I have a clean copy if you want to take
19 a look at it. I haven't written on anything.

20 **MR. CORWIN:** If he needs it, sure.

21 **THE WITNESS:** That would be helpful,
22 because it was helpful in this case.

23 **MS. FISHER:** If that's okay with
24 everyone. Do you want to take a look at it first?

25 **MR. CORWIN:** No. I believe you if you

1 sample. I'm not aware that she did any air
2 sampling, and so she -- I -- it's impossible or
3 it's not possible to infer because there -- she
4 identified growth two months after examined it, his
5 bed, on a tease tape sample, it's not possible to
6 infer that because it's located there that we have
7 exposure here (indicating). If we could -- she
8 could state that there's a potential for it, but I
9 don't -- I'm not aware that she did any air samples
10 to indicate that it vertically transferred.

11 **Q.** What's the source of that information
12 that you just relayed to me?

13 **A.** The -- I saw the -- and we discussed
14 it, the lab results from EMLab P&K that said
15 Cladosporium on the tease tape sample. That's the
16 only thing that I know that she did. If she did
17 something else, I'm not aware of it.

18 **Q.** You take issue, at the last sentence,
19 that the upper layers of the bedding material was
20 not analyzed, you would take issue with that fact?

21 **A.** I -- I -- to my knowledge, I had --
22 have not seen any reports that the upper levels
23 of -- in other words, the topper of the mattress or
24 any of the other parts were analyzed, I have not
25 been made aware of that.

1 say there's no notes on it.

2 **MS. FISHER:** I just got the binder
3 this morning, so --

4 **THE WITNESS:** All right. So are we
5 looking at page 1, sir, or where are we looking?
6 **BY MR. CORWIN:**

7 **Q.** Yes, page 1, please.

8 **A.** You've got photos, those are pictures
9 later.

10 **Q.** Yes.

11 **A.** Okay, go ahead.

12 **Q.** So you indicate that "Tests conducted
13 by the plaintiff's expert, Patsy Duncan of
14 Fungus-A-Mungus, fail to show how spores at this
15 location in the bed caused exposure above normal
16 background levels in the breathing zone above the
17 bed."

18 **A.** Okay.

19 **Q.** What's the basis for that statement?
20 Have you read her reports or have you seen a
21 deposition that she's given?

22 **A.** I got the -- this is what I've seen
23 from her. So this would be the basis for my -- my
24 piece on it, is that she did do a tease tape
25 sample. I'm only aware that she did a tease tape

1 **Q.** So you place significance in your
2 rebuttal, next paragraph down, that according to
3 the Hemming report, he is also exposed to
4 Cladosporium at his church and his office?

5 **A.** Yeah. During the -- and an air
6 sampling is really tricky, but it's really easy to
7 get like a false negative because you're only
8 sampling -- I think I alluded it to like a football
9 game. You could be watching a football game on TV
10 and the spore counts would be as interesting as the
11 time out before the punt, right after a punt, so
12 you don't get anything, and then a moment later
13 you're going to see a lot of activity, like a punt
14 blocked and returned for a touchdown. So you get
15 high levels of concentration.

16 **Aerosols** tend to be -- or bioaerosols
17 in particular tend to be really low and then really
18 high, then really low, then really high. So they
19 vary logarithmically to bounce -- bouncing up and
20 down. You can sample minutes apart and get
21 completely different counts.

22 **Q.** My question was, as part of the basis
23 for your opinion to rebut Patsy Duncan's tests, are
24 you relying upon the Hemming report indicating that
25 Ralph Simon is also exposed at his church and his

1 office?

2 **A. Yes.**

3 **Q.** And if for some reason that report is
4 inaccurate or not relevant to Mr. Simon's exposure,
5 would you agree that that basis for your opinion is
6 not proper?

7 **A. I don't think so, because it would be**
8 **incredibly -- I'd say, unlikely for him to be**
9 **exposed at some time to Cladosporium there given**
10 **the ubiquity of that organism and the environment.**

11 **Q.** You take issue with the fact on the
12 next page that "humidity levels were not controlled
13 during storage." What's the significance of that?

14 **A. Well, and I'm relying on at least a**
15 **summary description of what -- how the material was**
16 **stored, and correct me if I'm incorrect on it, but**
17 **the -- my recollection is that he indicated that**
18 **the -- the -- we're going to call it the foam**
19 **material was slimy and that he -- after taking -- I**
20 **don't know the sequence about photos, but after**
21 **noticing that that he placed that material in a**
22 **bag. I'm inferring from the slimy that it would**
23 **contain moisture, and that's an inference that I**
24 **made; and, then, if you take an object that contains**
25 **moisture and put it in a plastic bag, that creates**

1 **later was Cladosporium, I would trust them to**
2 **indicate that.**

3 **I don't -- it's hard to -- you know,**
4 **in an ideal case for all of us here it would have**
5 **been really great right when he opened it up to**
6 **take the sample and then we'd have a pretty good**
7 **idea, we'd say, okay, we're sure. But we don't**
8 **know what transpired between those two months, and**
9 **I'd really like to know that.**

10 **Q.** My question was, you can't rule out
11 that what he observed when he took it apart --

12 **A. I can't rule --**

13 **Q. -- was mold?**

14 **A. -- it out completely, no. We don't**
15 **have -- we don't have enough information.**

16 **Q.** For the mold to grow in the bag, it
17 would have to continue to have a water source,
18 correct?

19 **A. Well, and it would depend on how --**
20 **yeah, how tightly sealed the bag was. If the bag**
21 **was tightly sealed -- for instance, I had my**
22 **clothes at a retreat that were kind of damp that**
23 **were placed in a bag, and if the bag maintains**
24 **moisture you can -- it gets pretty funky after a**
25 **while. So it would depend on how tightly the bag**

1 **an environment that could be conducive to mold**
2 **growth.**

3 **Q.** Well, in your assessment of this, what
4 do you think the slimy black stuff was?

5 **A. I don't know. I -- I would be very**
6 **curious. So, essentially, I'm not sure if it's**
7 **bacteria, because bacteria can be slimy and black.**
8 **I don't know. So I would -- for instance, I get a**
9 **lot of questions about we'll get black deposition**
10 **right by a supply diffuser, and I'll say I don't**
11 **know if this is dust or if it's --**

12 **Q. Mold?**

13 **A. -- mold, and so I'll have to tease**
14 **tape it, and I've been surprised, okay, it's just**
15 **dust or I'll tease tape it, huh, it's mold, and**
16 **typically it's Cladosporium.**

17 **Q.** So you can't rule out as you sit here
18 today that the black slimy material that Ralph
19 Simon observed when he first took apart his bed was
20 mold?

21 **A. The only basis that I have for it**
22 **would be the result that occurred -- you know, the**
23 **sample that occurred two -- two months later; and I**
24 **will -- I trust the work of EMLab P&K, and if they**
25 **said that tease tape that was taken two months**

1 **was sealed.**

2 **Q.** Okay. Well, I need to explore that a
3 little bit. If it's tightly sealed, I think what
4 you said is the moisture that's already present
5 can --

6 **A. Facilitate.**

7 **Q. -- facilitate the growth of mold?**

8 **A. Yes.**

9 **Q.** If it's not tightly sealed and the
10 moisture is allowed to evaporate or dry, it's not
11 going to --

12 **A. The -- yeah.**

13 **Q. -- facilitate the growth of mold?**

14 **A. The looser the seal, the less**
15 **likelihood; and the other part is the conditions of**
16 **storage weren't controlled. So I don't know what**
17 **the humidity was in the garage, either, so --**

18 **Q.** You say, "From the information
19 available, it is impossible to determine the start
20 time for fungal growth on the bed." Is that based
21 upon because there was no testing immediately when
22 he found it?

23 **A. That's correct, yeah.**

24 **Q.** And that's the sole basis for that?

25 **A. Yeah. Well -- well, the -- the other**

1 basis would -- would be -- yeah, we just don't
2 know. We know we have it two months later. We
3 have no knowledge of any time after that -- or
4 previous to that. I think for all of us it would
5 be helpful to have that.

6 Q. You do indicate, though, under your
7 Analogy, second, that "the Plaintiff took doctor
8 prescribed prednisone." What's the source for
9 that?

10 A. Um, I believe that was part of the
11 summary that was provided to me by the --
12 Oppenheimer.

13 Q. And you say, "Sweating is a known side
14 effect of this drug," and then you reference it to
15 footnote No. 7. Did you do that research or was
16 that research provided to you, also?

17 A. No. That was something I looked up;
18 and, then, I've also personally taken Prednisone,
19 and that was a side effect that occurred for me, as
20 I sweated a lot and my shirt was soaking wet.

21 Q. And, then, the next sentence I find
22 interesting. You say, "The chamber material has
23 stains consistent with moisture exposure from
24 drooling, sweating or some other source."

25 So, what we can say as we sit here

1 today that at some point there was moisture in that
2 area from the foam topper pad to the air chamber?

3 A. I would say there is evidence that
4 would suggest because of the staining that that
5 would be correct, that at some time there was no
6 moisture that got to that.

7 Q. Enough, in your opinion, to cause
8 staining?

9 A. Yes, yes.

10 Q. You indicate that "Dr. Pastore renders
11 his opinion without performing any tests on the bed
12 itself, nor does he compare fungal levels in
13 competitor mattresses of the same age used under
14 the same condition." Did I read that correctly?

15 A. Ah, yes. That was my understanding.

16 Q. Did you read his report?

17 A. I believe I had a summary, and I can't
18 remember if I read the full report.

19 Q. Again, that was provided by your
20 attorneys, right?

21 A. That's correct, yeah.

22 Q. You understand that at issue in this
23 case is the design of the Select Comfort bed,
24 right?

25 A. Um, if that's what you're talking

1 about. I -- I -- I -- my understanding was that
2 there is a -- that there is exposure to Cladosporium
3 and that that -- and he was concerned about that
4 affecting his health.

5 Q. Okay. You haven't read the Complaint,
6 I take it, in this case?

7 A. No, I have not.

8 Q. But do you now understand -- or maybe
9 I have to tell you for the first time, the claim,
10 the allegations, in part, in this case is that the
11 Select Comfort bed is defectively designed such
12 that it's conducive to the growth of mold, are you
13 aware of that?

14 A. Oh, I am now that you inform me.

15 Q. There is no allegation that there are
16 other beds that were manufactured by other people
17 that cause mold exposure or were defective, are you
18 aware of any of those?

19 A. Um.

20 MS. FISHER: Objection, vague.

21 THE WITNESS: Yeah. I don't --

22 MR. CORWIN: Okay. I'll rephrase the
23 question.

24 THE WITNESS: Yeah.

25 MR. CORWIN: Because I'm really trying

1 to rush, and it's my fault, I always get myself in
2 trouble trying to wrap up.

3 THE WITNESS: Okay.

4 BY MR. CORWIN:

5 Q. Are you aware of any allegations in
6 this case that traditional beds, box springs and
7 mattresses are defective?

8 A. I -- I -- I haven't been told about
9 anything, and I haven't read that thing so I
10 don't -- I wouldn't know.

11 Q. And then you say -- and you're
12 critical of Dr. Pastore for not comparing fungal
13 levels in competitor mattresses of the same age
14 used under the same condition. Did you do any
15 testing of competitor mattresses for fungal growth
16 under the same conditions?

17 A. And -- no, I did not. This study I
18 had was an observational one. I've never been
19 given the funding or the time to do side-by-side
20 comparisons under --

21 Q. When you say competitor's mattresses,
22 are you talking about other air bed systems?

23 A. I'm just talking about beds in
24 general.

25 Q. Beds in general?

1 **A. Yeah, if that clarifies it for you.**

2 **Q.** And I'm curious. I understand the
3 points you're making in the report, but why is
4 this exhibit, these two photos, why are they
5 attached to your rebuttal report?

6 **A. Oh, it was showing that Cladosporium**
7 **is generally found in the environment and**
8 **incredibly difficult to -- or it's a organism that**
9 **grows on a lot of different surfaces, and it's very**
10 **difficult to prevent it from growing on surfaces.**
11 **Does that kind of clarify?**

12 **Q.** Where did this picture come from, this
13 top one (indicating)?

14 **A. This one in particular is a walk-in**
15 **cooler. I don't know the exact -- don't recall the**
16 **exact location, but it's -- essentially, there's**
17 **dust on the surface of the walk-in cooler, and then**
18 **I happened to take a tease tape on it. I recently**
19 **did a couple other coolers, and they're growing on**
20 **about everything, and it was Cladosporium, so --**

21 **Q.** Do you agree that mold exposure,
22 including Cladosporium, can cause destruction of a
23 person's sinus tissues?

24 **A. I --**

25 **MS. FISHER:** Objection, foundation.

1 **people.**

2 **Q.** In fact, you're participating in
3 studies now with Select Comfort to determine
4 whether the materials they're using in their beds
5 now can cause mold growth, right?

6 **MS. FISHER:** Objection, misstates
7 prior testimony.

8 **THE WITNESS:** I am testing it to make
9 sure that the quality of the material that they're
10 doing, that the QC process is working so that the
11 antimicrobials are working.

12 **BY MR. CORWIN:**

13 **Q.** So --

14 **A. That's what I'm doing.**

15 **Q.** I see.

16 Were you asked to give an opinion as
17 to whether a warning should have been given to
18 Ralph Simon when he purchased his bed with regard
19 to the possibility that mold could grow in the bed?

20 **A. I wasn't asked.**

21 **Q.** Do you have an opinion?

22 **A. Other than I would anticipate that**
23 **it's likely that there would be mold growth in all**
24 **beds -- or not all beds, I'd say a significant**
25 **portions of beds during their lifetime, because**

1 **THE WITNESS:** I don't know about that.
2 That would be a medical doctor would do that part.

3 **BY MR. CORWIN:**

4 **Q.** Would you agree with me that a
5 manufacturer of a bed cannot needlessly endanger
6 its customers in the public that's going to use it?

7 **MS. FISHER:** Objection, foundation.

8 **THE WITNESS:** I don't know --

9 **MS. FISHER:** Well outside the scope of
10 this deposition.

11 **THE WITNESS:** I don't understand what
12 you mean by needlessly endanger.

13 **BY MR. CORWIN:**

14 **Q.** Okay. Do you agree that a
15 manufacturer of a bed must test its products to
16 make sure it is safe for the people that use it?

17 **MS. FISHER:** Objection, foundation,
18 outside the scope.

19 **THE WITNESS:** What -- what safety are
20 you talking about, with respect to --

21 **BY MR. CORWIN:**

22 **Q.** Just in general, do you agree?

23 **A. Yeah, that it doesn't have iron spikes**
24 **that make people feel awful. Yeah, I'm sure it**
25 **shouldn't -- shouldn't hurt people, physically hurt**

1 **it's like if I wore the same shirt for 13 years,**
2 **I'd expect it to have some wear and tear.**

3 **Q.** Do you have an opinion as to whether
4 Select Comfort should have provided a warning to
5 Ralph Simon, knowing what you know, and that is
6 mold can grow, develop in the Select Comfort beds?

7 **A. I do not have an opinion.**

8 **THE WITNESS:** May I get a glass of
9 water?

10 **MR. CORWIN:** I actually -- you can get
11 a glass, but I don't think I have more than two or
12 three more questions.

13 **THE WITNESS:** Okay.

14 **MR. CORWIN:** I don't want to stop you
15 from hydrating, so --

16 **THE WITNESS:** Yeah, otherwise you
17 won't be able to understand me.

18 (Reporter's Note: Witness gets a
19 glass of water.)

20 **MR. CORWIN:** Better, better?

21 **THE WITNESS:** Better.

22 **MR. CORWIN:** Okay.

23 **BY MR. CORWIN:**

24 **Q.** Have you taught any classes with
25 regard to corporate responsibility?

1 A. No, I have not, sir.

2 Q. Do you have any training or education
3 in corporate responsibility or responsibility of
4 retailers?

5 A. No, I don't.

6 Q. Do you agree with me that if a
7 manufacturer of a bed knows that its beds can grow
8 mold and knows that there are people who are buying
9 those that may be allergic or sensitive to mold,
10 that they have a duty to warn the potential
11 purchasers of the bed?

12 A. I think all bed manufacturers would
13 have to issue that -- would have to state that,
14 because they can't control the conditions of use on
15 their beds.

16 Q. So you agree that a manufacturer of a
17 bed with that knowledge should provide a warning?

18 A. No, I don't think so. It would be --
19 it would be like a manufacturer of stainless steel
20 saying if you have this metal and you put it in an
21 environment that's wet and it gets dusty that there
22 would be mold on it. I -- it's -- it's --

23 Q. You think a bed is similar to a
24 stainless steel counter?

25 A. I think -- I think it would be

1 foolish -- or it's -- it's a -- let's see. Mold
2 will grow where you have spores, dust and water;
3 and manufacturers can't control how -- how people
4 handle their materials. So I don't think a bedding
5 manufacturer would be any different from anything
6 else; and it's an unnecessary warning because it's
7 generally recognized that if something is wet, has
8 dust on it and has available moisture and spores
9 that there's going to be growth on it.

10 Q. So you believe that the customers,
11 including Ralph Simon, who purchase Select Comfort
12 beds generally recognize that if moisture gets down
13 into the bed and there's dust that mold can grow?

14 MS. FISHER: Objection, calls for
15 speculation.

16 THE WITNESS: I just believe that
17 people know that knowledge in general on any
18 material, not with -- particularly with respect to
19 beds, that any material that gets wet and has
20 moisture in the spores that stuff will grow on it.

21 MR. CORWIN: I have nothing further.

22 THE WITNESS: Thank you, sir.
23 (Whereupon, the deposition of NEIL
24 GEOFFREY CARLSON was concluded at 12:19 p.m.)
25

1 I, NEIL GEOFFREY CARLSON, do hereby
2 certify that I have read the foregoing deposition
3 and found the same to be true and correct except as
4 follows, (noting the page and line number of the
5 change or addition as desired and the reason why):

6 Page Line Correction

7 _____
8 _____
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24 _____

25 Date: NEIL GEOFFREY CARLSON

1 STATE OF MINNESOTA)
2 COUNTY OF DAKOTA) ss. CERTIFICATE

3 BE IT KNOWN that I, Jean F. Soule, Registered
4 Professional Reporter, took the foregoing
deposition of NEIL GEOFFREY CARLSON;

5 That the witness, before testifying, was by me
6 first duly sworn to testify the whole truth and
nothing but the truth relative to said cause;

7 That the testimony of said witness was recorded
8 in shorthand by me and was reduced to typewriting
under my direction to the best of my ability;

9 That the foregoing deposition is a true record
10 of the testimony given by said witness;

11 That the reading and signing of the foregoing
12 deposition by the said witness were not waived by
the witness and respective counsel;

13 That I am not related to any of the parties
14 hereto, nor an employee of them, nor interested in
the outcome of the action;

15 That the cost of the original has been charged
16 to the party who noticed the deposition, and that
all parties who ordered copies have been charged at
the same rate for such copies;

17 WITNESS MY HAND AND SEAL this 13th day of
18 August, 2015.

19 JEAN F. SOULE, Notary Public, RPR
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25

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